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# ESTATE PLANNING TOOL KIT FOR MILITARY & FAMILY MEMBERS



## PREFACE

Do you care what happens to your family or property if you become disabled or die? If so, you need a plan – an **estate plan**. A good one helps you preserve and build your estate during your life and pass it on as you desire when you die. It may save taxes and lower expenses too.

Young or old; single, married, or divorced; financially wealthy or not – planning is important. Effective estate planning is a continuing process that takes time and conversation – about your goals, priorities, and quality of life. It supports your financial and retirement planning.

If you are looking at this TOOL KIT, you are thinking about making your plan or part of it, or may have already prepared a partial plan (such as a Last Will & Testament, a Living Will, or a Durable Power of Attorney for Health Care). Congratulations, you understand and appreciate good advance planning for such important decisions. Your family will too. You also recognize that it is very unlikely to hurriedly produce the best estate plan through “catch-up” activities just before or during your deployment or mobilization.

To help you, this TOOL KIT explains basic planning concepts (such as a will, a trust, an advance medical directive, organ donation, and funeral planning), and offers some suggested solutions, planning tools, and other resources. It will help you prepare for obtaining legal advice to ensure that you receive an estate plan tailored to your needs.

It briefly introduces common concepts and techniques military members and their spouses often use. Review it to become familiar with the basics and how you might use them to your advantage. Next, review and discuss the [ESTATE PLANNING QUESTIONNAIRE](#) with your spouse, complete it, and then see an attorney. You may also decide to prepare a [PEACE OF MIND PLAN](#) to organize information for your survivors. (You may download each from our [Legal Services](#) site, Estate Planning Information Center.)

It is easy to postpone developing your plan. Delay, however, risks that your property does not go where you want, fails to save money when you could have, and may frustrate your survivors while they straighten out matters after you die. In the end though, you decide to plan or not.

This TOOL KIT is best viewed online to take advantage of its internal bookmarks and hyperlinks. You may download a copy from our [Legal Services](#) site, Estate Planning Information Center.

The general information here will help you understand estate planning but is not a substitute for legal advice. Attorneys in the Army Judge Advocate General's Corps have the expertise to help you identify your estate planning needs. Advising military members and their spouses on their estate, whether large or small, is one of our most important services. In most cases we will prepare your customized estate plan (most often a will, advance medical directive, and power of attorney). In some cases, however, you or your family member may have complex needs beyond our expertise. In such a case, we will help you find an experienced estate planning expert.

Send comments on this guide to the Office of the Judge Advocate General, Legal Assistance Policy Division, ATTN: DAJA-LA, 1777 N. Kent Street, Rosslyn, VA 22209-2194 or e-mail [otjagla@hqda.army.mil](mailto:otjagla@hqda.army.mil).

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## CHAPTER 1: ESTATE PLANNING INTRODUCED; SAMPLE SOLUTIONS

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### INTRODUCTION

Death is inevitable – sooner or later you are going to die. Before you do, there are some actions to take to put your affairs in order. You do so by “**estate planning**” – a process of building your estate, conserving and using it while you live, and transferring it as you wish when you die. Almost everyone wants a large estate because it means financial security while you live and for your family after you die.

Most military members use a **will** to indicate who inherits belongings, how and when, as the main estate planning document. Your estate plan may require more than just a will, however. For example, it may also guide the use of your estate if you are absent or unable to manage it, coordinate life insurance policies and survivor benefits, express your funeral preferences, and more.

What is “right” depends on your situation and your personal goals and objectives. This chapter describes several client situations that Army Legal Assistance attorneys advise on and the typical estate plan solutions those clients often use. You might recognize your situation in part described below. Remember, however, that your situation may differ and you should discuss it with your attorney to decide what is right for you. Of course, your spouse should also have an estate plan.

### YOUNG & SINGLE

Meet Sergeant (SGT) Ross & friends (Private First Class (PFC) Joey, Rachel, & Phoebe) and his sister, Monica, and her husband, Chandler. SGT Ross is three times divorced. He and his first ex, Carole, had a child, Ben, whom SGT Ross loves very much. He was also briefly married to Rachel, who is pregnant with his child. Rachel doesn't plan to marry SGT Ross again. PFC Joey is a single soldier in SGT Ross' unit. He lives in the barracks, drives a car that he makes monthly payments on, owns a computer, CD player, digital camera, and a few other items. He is romantically interested in Rachel, SGT Ross' second ex-wife.

At the recent soldier readiness briefing PFC Joey and SGT Ross heard briefly about wills and estate plans. Both quickly realized they had several questions and needed more information before deciding whether to prepare a will. PFC Joey wondered about leaving his property to Rachel if he should die. He also wanted to leave Phoebe his computer and CD player. SGT Ross wants to make sure that his SGLI helps Ben (and any other children he fathers), but does not want Carole to “handle” the money. He understands that SGLI is normally paid to the named beneficiary, but when that person is a minor the insurance company will pay to the minor's guardian (or a trustee if a trust exists and the SGLI beneficiary designation names the trust). SGT Ross is thinking about asking Monica and Chandler to be guardians of Ben's property, or maybe setting up a trust in his will for Ben's benefit and naming Monica and Chandler as the trustees.

Both PFC Joey and SGT Ross will think about these matters and then consult an attorney for advice and assistance in preparing a plan.

## MARRIED WITH YOUNG CHILDREN

You know Staff Sergeant (SSG) Ray. Everybody knows “Ray”, Debra, his wife, and their two children. SSG Ray and Debra have been married several years. They live in a house making monthly mortgage payments in hopes of one day hosting a “mortgage burning” party. SSG Ray’s single brother, Robert, lives nearby. Their parents, Marie and Frank, are older, well into their retirement. They already own their home across the street from SSG Ray’s. At dinner last week, they asked SSG Ray if he would be the executor of their estate. Later, Debra asked SSG Ray what would happen if he died. What would happen to the house they live in? What if they both died at the same time – who would care for the children? Although they are still paying off their house, they bought mortgage life insurance. For their other debts, they purchased other life insurance. They do not think their estate is over \$1,000,000 so they are not worried about estate tax planning. . . at this time. They should be, however, if their total estate, including life insurance, is over \$1,000,000.

They decide to use “*Honey, I Love You*” wills that leave everything to each other, then to the children. This protects the surviving spouse, who may live thirty years or more after the other dies. Using a will with a trust for their children is probably very smart in case they both die while the kids are very young. In addition, SSG Ray made Debra his SGLI beneficiary, and Debra named him her life insurance policy beneficiary. SSG Ray also named Debra his military thrift savings plan beneficiary. SSG Ray and Debra will revise their estate plans as they grow older.

## CARING FOR MINOR CHILDREN – GUARDIANS – PERSON & PROPERTY

What if SSG Ray and Debra both died together in a car accident? Who would care for their children? If you have young children, your will should nominate one or more guardians. If both parents die, the law requires a personal guardian to step in and care for the child in place of the child's dead parents. Consider these questions:

- Who would provide the best care for your children if you and your spouse die?
- Is their home large enough for them?
- Will the guardians have enough money to support your children with the kind of education and lifestyle you prefer?
- What financial provisions should you make for the children?

Even if you are divorced, the surviving natural parent is almost certain to get custody of your child if you die. Nevertheless, you may want to nominate a guardian in case.

You can use your will to name a personal guardian. Unless someone challenges your choice, the probate judge will usually approve your nominee. It is better to nominate an individual instead of a couple in case they split up. Be sure to check with your nominee to confirm he or she will do the job, and name an alternate in case something happens to your first choice or he or she should decline to serve. If you do not appoint a guardian, someone (usually a friend or relative) may ask the court to name him or her as guardian. If no one volunteers, the court will choose someone, usually the nearest adult relative.



Once you identify someone to care for the children, what about someone to look after the children's property – a *property guardian*? Children under 18 cannot own (without supervision) much property. The law requires an adult who is responsible for managing their property for the child's benefit. You should name a property guardian, even if you do not leave your children any money, in case the other parent dies too. Frequently, the same person you name to be the child's personal guardian is also the property guardian. You may, however, name different people to manage the child's money and personal affairs. You might do so if the personal guardian lacks the financial expertise or inclination to manage money or you are divorced from the child's other parent. Your property guardian could help make sure that the money is spent on the child.

In some situations, it might be best to use a trust in your will for your children instead of a property guardian. Doing so could avoid court supervision and associated costs. You might fund your trust with life insurance policies on each parent's life, payable to the surviving spouse, or to the children's trust if both parents die simultaneously. In such a trust, your trustee manages the assets you leave to your children, set forth the conditions under which money would be paid to them, and give the trustee authority to spend, sell, or invest for the children's benefit. The trust usually provides for the children's care and education, and makes money available as they reach certain ages – 18, 21, 25, or 30 – or any other age you set. In addition, you could direct your trustee to pay an additional amount (for example, 20-40% of a trust beneficiary's earned income at different ages) until a certain age (maybe 28). If your teenage son earned \$3,000 from a summer job, your trustee might pay an additional \$600 to \$1200 "bonus". That could help your teenager develop good work and money habits.

If you have a small estate – one that is less than \$200,000 – you might think a trust for your young children is unnecessary. You might use a custodian account for them while you are still alive and leave funds to that account in your will. Most states permit you to make gifts to such accounts in your will. The custodian accounts may be established easily: open an account in your child's name and deposit money or property in it while you are still alive. You (or your spouse) can be the account custodian. You should name a successor in case you die while the child is under 18 (or up to 21 or even 25 in some states). When your children are over 13, the income in these accounts is subject to federal tax at the children's rate, which may be less than your tax rate. For younger children, via the "kiddie tax," the government taxes the account income at your tax rate.

## **MATURE & RETIRED**

Marie and Frank, on the other hand, have many assets – their paid-for home, several Individual Retirement Arrangements, a bank account, some mutual funds, life insurance – totaling over \$1,000,000. They are enjoying their retirement, and Frank's Sergeant Major's retired pay helps. Both Marie and Frank are concerned that as they grow older, their health will eventually fail. Frank elected Survivor Benefit Plan (SBP) coverage for Marie. They are wondering about long term care insurance and what would happen if either became terminally ill. They are thinking about health care powers of attorney that let each spouse make decisions for the other if one becomes incapacitated, and a living

will. They already own their home – jointly with right of survivorship – so they know that the survivor will automatically inherit it when the first one dies, but they saw an ad for a living trust. They wonder about its usefulness if they become disabled, or incapacitated and cannot care for themselves. They understand that this would avoid probate that could be complicated and costly for a large estate. To use one, they would place most of their assets into a living trust, and the surviving spouse would receive the income from that trust for the rest of his or her life. When the second spouse dies, the property remaining in the trust passes to the other beneficiaries (usually their children or grandchildren). Finally, each also has a will that leaves the rest (or residue) of the estate to a trust. They will consult an estate planning attorney to review their plans.

## FREQUENTLY ASKED QUESTIONS

### **Do I have an estate? If so, what is in my estate?**

Probably. Everything you own – a car, a house, personal effects, a coin collection, money, etc., is part of your **estate**. Even items that you own jointly with right of survivorship are part of your estate.

#### **What Is “My Estate”?**



Everything I own

- my home, other real estate, bank accounts, investments, retirement benefits, IRAs, SGLI/ life insurance, collectibles, personal belongings



### **What is estate planning?**

Estate planning is a process of making decisions during your lifetime about the use, maintenance, and disposal of your real estate, investments, social security, cash, life insurance, and business interests. It involves accumulating wealth during your life and disposing of it when you no longer want it or after you die. Done well, it protects your beneficiaries from a legal headache after you die.

### **Why should I plan my estate?**

Planning gives you peace of mind; your desires are recorded and your property will be disposed of as you want. Without a will, years could pass before your property is awarded to your heirs, or it could be transferred and distributed in ways you do not want. A well-designed estate plan can save you and your heirs money, provide for children of previous marriages, nominate a guardian for minor children, and establish a trust to preserve your assets for minor children until they reach the distribution age you set in a trust. A coordinated estate plan considers your Servicemen's Group Life Insurance (SGLI) beneficiary designation together with any commercial life insurance policy you may have. It anticipates a possible incapacity and memorializes your desires on medical care in the event of a terminal condition. Estate planning has its advantages: [10 Things Estate Planning Can Do For You.](#)

### **Who Needs Estate Planning?**



Everyone

### **Do I need an estate plan?**

Almost everyone does whether or not they are rich. Estate planning can be critical to the health, security, and welfare of your loved ones. It is one way to ensure that your wishes will be carried out after you die.

### **I'm single, live in the barracks, own a TV, stereo, and computer, and am making car payments. Do I have an estate to plan?**

Yes, in addition to those items, your estate includes your SGLI. You could have an estate worth \$250,000 or more if you have other life insurance. If you named a beneficiary on your SGLI (maybe a parent, brother, or sister), you have partially planned your estate. State law will decide who gets your other items after your death if you do not make a will.

### **What should my estate plan include?**

The centerpiece of an estate plan is a document that distributed your assets when you die. This is usually a will, and it may include a trust. Both wife and husband should have a plan, even when they own all significant assets together in joint tenancy. Your plan can distribute your property, subject to certain rights of your spouse that your attorney can explain. You can select your beneficiaries. You decide who should serve as guardian for your minor children. Without a plan, the law dictates how your assets will be distributed. Wills and trusts are only two of several legal devices usable in a carefully planned estate program. Discuss these questions with your attorney to decide on your estate plan:

- Do I need a will? Is a revocable living trust more appropriate to my situation?
- Should my spouse also have a will or revocable trust if there is no property in my spouse's name?
- Is joint tenancy a good substitute for a will or revocable trust?
- If I do not have a will or revocable trust, who will receive my assets when I die? Is the cost of administering my estate without a will or revocable trust more than if there is one?
- Should I leave everything to my spouse?
- Is saving estate taxes important? How should I do so?
- Should I use a trust to give my family greater protection and security?
- Should I prepare a trust in my will to benefit my children for their support and education and at what ages should payments begin? What happens to my minor children if I die without a will?
- Who will administer my estate if I die without a will or revocable trust?
- Who will pay my burial expenses, taxes, and debts?
- Do I want to make gifts to my heirs before I die?



### **How do I create my estate plan?**

Creating an estate plan starts with your careful analysis of what you own (or may inherit) and how you own your assets (real estate, securities, business interests, life insurance, retirement plan benefits, and other property), and whether you should use a will, a trust, or both. Your attorney will discuss wills, trusts, business interests, life insurance, Social Security benefits, long-term care, charitable giving, special needs for disabled or elderly, taxes, estate administration expenses, etc. Many of the subjects discussed will have important legal and tax consequences. You should decide with the advice of your attorney, aided as necessary by an accountant, trust officer, insurance adviser, and/or investment counselor. With a properly tailored estate plan, you will be sure of the welfare of your family and the education of your children. You will know that taxes will be minimized, and that your property will pass to your intended beneficiaries.

### **What should I do next?**

Discuss these matters with your spouse or family, and determine your needs and objectives.

### **How will my family know where to find my estate plan?**

Prepare a letter of instruction that outlines your plan and the documents that form it.

### **How can Army Legal Assistance help?**

Your local legal assistance attorney may advise you on coordinating your estate planning documents – your will, your life insurance beneficiary designations, a power of attorney, an advance medical directive, and your letter of instruction.

## **SUMMARY**

Young or old, single, married or divorced, many military members and their spouses (or surviving spouses) use one or more of these in their estate planning:

- Will
- Trust (either as part of the will or separate)
- Life Insurance (often commercial life insurance beyond SGLI)
- Living Will/Health Care Power of Attorney
- Durable Power of Attorney
- Anatomical Gift
- Letter of Instruction

This guide explains these techniques and how you might use them.

## **LEARN MORE**

Find out more about estate planning generally on the Internet. Start with our [Legal Services](#) web site and review our Estate Planning Information Center, read [The Right Estate Plan for You](#), or check our [ESTATE PLANNING INTERNET RESOURCES](#) appendix. Also see [Essential Estate Planning: Tools and Methodologies for the Military Practitioner](#).

## CHAPTER 2: YOUR LAST WILL & TESTAMENT

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### INTRODUCTION

Many military members and spouses use a **Last Will & Testament** to distribute their property (for example, automobile, jewelry, collectables), name an *executor* (one who administers the estate), and name a *guardian* of the person (one with whom a minor lives) and a guardian of the estate (one who manages the minor's property). The will is often the main part of the estate plan, but it must be coordinated with other estate planning tools (for example, trust, life insurance, beneficiary designations).

### FREQUENTLY ASKED QUESTIONS

#### Does a will cover everything I own?

Not always. Some property passes to your beneficiaries apart from your will.

(1) Life insurance: Money from a life insurance policy goes to the person named as a beneficiary on the policy.

(2) Retirement plans: Money from a retirement plan is paid to the beneficiary you named in the plan. This includes a 401(k) account, thrift savings plan, or an individual retirement arrangement (IRA).

(3) Property owned as a joint tenant with right of survivorship: If you own real estate, cars, bank accounts, or other property with someone else as a joint tenant with right of survivorship, the co-owner inherits your share when you die.

(4) Living trust: Any property that you place in a living trust during your lifetime passes according to the trust. Often it goes to your beneficiaries when the trust ends.

(5) A spouse's half of community property: In a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) real estate and possessions acquired during marriage are owned equally by each spouse. Your will distributes only your half of the community property. It may dispose of all of your separate property, that is, possessions and property you brought into the marriage along with gifts and inheritances you received.

(6) "Transfer on death" or "Pay on death" accounts: Some bank accounts and security accounts may be held with a beneficiary designation such as "transfer on death" ("TOD"). Other assets, such as U.S. savings bonds, may be held in a form directing those assets to be "paid on death" ("POD") to a named beneficiary.

#### Are any special people named in a will?

Yes, your will should name:

- **Your beneficiaries:** Family members, friends, organizations, or others who will inherit your assets.
- **Guardian:** The person who will take care of your children if you die before your children become adults. The guardian will raise the children and make decisions about their day-to-day activities (for example, school). In many cases the guardian also manages any property a minor child inherits until the child reaches legal age under state law. In some cases, a trustee will manage the property. Consider these factors in selecting a guardian for your minor children:
  - (1) Is the person you want to serve old enough?
  - (2) Is the person physically able to handle the job?

- (3) Does your choice have the time to raise your children?
- (4) Can you provide enough money to raise the children? If not, can your choice afford to raise the children?
- (5) Does your choice care for your children's welfare?

You should discuss the possibility of serving as a guardian with your potential choice to determine if that person is willing and able to do so. Remember, just because you name someone in your will as a guardian does not mean that person has to be the guardian.

- **Executor:** The person or institution that collects your property, pays the debts and any taxes that are due, and ensures the remaining property is distributed to the beneficiaries.

### **What happens if I do not make a will?**

Some people believe they do not need a will because they do not own very much. If you die without a will ("intestate") state law determines who receives your property, and who will care for your minor children. If you are married, most states provide for distribution of a portion of your property to your surviving spouse. If you have children, most states provide for some of your property to go to your children. This can cause difficulty in some situations.

**EXAMPLE:** James dies with no will. His wife, Jill, and two minor children survive him. Jill will get the house and all the money in the bank accounts if she and James owned that property as joint tenants with right of survivorship. However, the stock James owned in his own name will be divided between Jill and the children. Jill may have to get a probate court's permission to use the children's share of the property for their benefit. This takes time and money.

### **Must I make a will?**

No. It is your decision whether you prepare a will or not. If you do not, then state intestate law will control the disposition of your property when you die.

### **Can I leave property to minor children in my will?**

Yes, minor children (children under 18 years of age) can inherit property. However, depending on the type of personal property, an adult must manage it until the child becomes an adult. Your will can name someone to manage the property for the minor, thus avoiding the need for a court-appointed guardianship. Some examples of property management arrangements are:

- (1) Name a custodian under the Uniform Transfers to Minors Act. Under most state laws, you can choose someone, called a **custodian**, to manage property you are leaving to a child. If you die when the child is under the age set by the law of your state of legal residence, the custodian will manage the property until the child reaches the age specified by your state's law—usually either 18 or 21 years of age.
- (2) Set up a trust for each child. You can use your will to name someone (called a **trustee**) who will handle the property the child inherits until the child reaches the age

you specify. When the child reaches that age, the trustee ends the trust and gives whatever is left in the trust to the trust beneficiaries.

(3) Set up a “pot trust” for your children. If you have more than one child, you may want to set up one trust for all of them. This arrangement is usually called a pot trust. In your will, you establish the trust and appoint a trustee. The trustee decides what each child needs and spends money accordingly from the trust assets.

(4) Name a property **guardian**. You can use your will to name a property guardian for your child. Then, if at your death your child is still a minor and needs a guardian, the court will appoint the person you named. The property guardian will manage whatever property the child inherits until the child is no longer a minor.

**For single parents, naming a guardian of minor children and their property is perhaps the most important reason to prepare a will.**

### **How long is a will valid?**

Until you revoke it by destroying it, or prepare and execute a new one.

### **Can I change my will after I sign it?**

As a general rule, a will has to be signed and witnessed before it is legally effective. Sometimes an event will occur that prompts you to change your will. You may use a codicil to make simple changes, such as naming a different executor. A codicil is a legal document that is added to your will. It must be prepared with the same formalities as your will, so do not cross out words, or write on your original will as this may invalidate it.

### **When should I review or change my will?**

Think about changing your will when:

- (1) You get married or divorced.
- (2) There is a birth or death in your family that affects your plan in your will.
- (3) You have a large increase or decrease in the value of your property.
- (4) The person you name as executor or guardian dies or becomes unavailable to serve.
- (5) You change your state of legal residence.
- (6) Estate tax law changes.
- (7) You decide to change how you want your property distributed.

### **Who should know about my will?**

Your executor (the person you named in your will to administer your estate), and your spouse or other responsible close friends and relatives. You should keep your will in a safe place, such as your attorney’s office or a locked fireproof box at your residence. If you use a bank safe deposit box, check to make sure the bank will not seal the box or limit access to it upon your death.

## **LEARN MORE**

Read more in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.

## CHAPTER 3: USING TRUSTS IN ESTATE PLANNING

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### INTRODUCTION

You may find a trust useful in your estate plan. A flexible tool that you can tailor to your needs, it offers you management control and certainty. A trust is a written legal agreement between the individual creating the trust and a trustee, the person or institution named to manage the trust assets. The individual creating the trust is the grantor, settlor, or creator. The trustee holds legal title to the assets, also called the trust principal, for the benefit of one or more trust beneficiaries. Trusts often play an important part in many estate plans, especially those with minor beneficiaries. In some cases, elderly individuals establish a **living trust** in case of incapacity or disability.

### FREQUENTLY ASKED QUESTIONS

#### **When can I establish a trust?**

During your lifetime or in your will. A trust you establish during your lifetime is called an *inter vivos* or living trust. You ordinarily establish a living trust by executing a trust agreement or deed of trust. A trust you establish in your will is a testamentary trust. It is dormant until you die and your will is probated.

#### **Can I change the terms of a trust after I establish it?**

Maybe, depending on the trust terms you put in when you set it up. You can establish a revocable living trust and amend or cancel it at any time if you change your mind about a beneficiary, asset distribution, or other trust term. On the other hand, you can establish an **irrevocable** living trust that you cannot change.

#### **Why should I use a trust in my estate plan?**

Trusts are used for many purposes, including:

- a. Managing assets: The responsibility of making investment decisions and maintaining adequate records can be transferred to either an individual or institutional trustee with investment experience.
- b. Protecting assets: Sometimes a properly drafted trust can protect the assets in a trust from the creditors of a beneficiary. Additionally, the assets may be protected from a spouse or former spouse in the event of the divorce of a beneficiary.
- c. Providing privacy: The assets, terms, and conditions of a trust are generally not subject to public inspection.
- d. Avoiding probate: The assets in a trust created and funded during the grantor's lifetime are controlled by the trust terms, and not by state probate law. In some states, avoiding probate can save time and reduce estate administration expenses.
- e. Providing for multiple beneficiaries: A trust can benefit more than one beneficiary and allow the trustee discretion in making distributions.
- f. Providing for special needs: A beneficiary may have a special need related to education, health, disability or something else.
- g. Tax planning: A trust can be used to take advantage of estate tax credits while assuring that the assets are available to meet the needs of a surviving spouse.



### **In general, how does a trust work?**

A trust's governing agreement directs how it works. In it, the trust grantor can indicate how and by whom assets will be managed; how the trust will be distributed after the beneficiaries die; and appropriate federal estate tax planning provisions to help reduce or eliminate the federal estate tax that could be imposed on your estate when you die.

### **Trust 101 – Common items**

Most trusts usually have these:

- a. Governing document: The written instructions listing the terms of the trust; usually found in a will, trust agreement, or court order establishing the trust.
- b. Trust assets: The property subject to the terms of the trust; called the principal, trust estate, corpus, or res.
- c. Settlor: The person who creates the trust; also called the grantor, donor, or trustor.
- d. Beneficiary: The person or institution named in the trust to enjoy the income and principal of the trust property. There can be one or more trust beneficiaries. If there are alternate or contingent beneficiaries, the governing document establishes the conditions under which they receive trust proceeds. When the beneficiaries are young (minors) the trust may also provide for the continued management of trust assets for their benefit. A beneficiary is the equitable owner of the trust property.
- e. Trustee: The person or institution named to handle the trust property. There can be one or more trustees. The trustee has the power to manage, invest, and dispose of the trust property subject to the terms of the governing document. Often it provides for a successor trustee if the first-named trustee can no longer serve. A trustee owes certain special duties to the trust beneficiaries.
- f. Duration of the trust: Most trusts have a definite beginning and ending. For a testamentary trust, the beginning date is the death of the testator who created the trust. In many trusts the ending date is when the youngest beneficiary reaches an age specified in the governing document or upon the occurrence of a certain event.
- g. Spendthrift provisions: These usually prohibit a beneficiary from signing over his interest in the trust to his creditors.
- h. Bond: Under many state laws, a trustee must post a bond to serve. A bond is similar to insurance – it can protect the trust beneficiaries from certain mistakes by the trustee. The governing document should specify whether the trustee is required to post a bond or other security.
- i. Trustee fees: The governing document should address what compensation, if any, is owed to the trustee for managing the trust assets.

### **Who should serve as a trustee?**

Be careful whom you choose as your trustee—an individual or institution (for example, bank or insurance company trust department) will be responsible for the management, investment, and distribution of funds. Your trustee has the legal right and responsibility to manage and control the trust assets. To accomplish this, the trust document gives the trustee guidance and certain powers and authority. The trustee is a fiduciary, subject to strict responsibilities and higher standards of care and performance than someone who is dealing with his or her own property. The trustee holds the trust assets for the benefit of the trust beneficiaries.

Consider these factors when deciding on your trustee:

- a. Ability to serve: An individual may die or become incapacitated during the term of the trust. An institution generally has an indefinite time period of existence.
- b. Expertise: Institutional trustees generally have expertise and experience in asset management and investment, record keeping, and preparation of reports and tax returns. An individual may not.
- c. Fees: Institutional trustees require annual payment of fees for their services. Often these are based on a certain percentage of the trust assets. An individual may serve and charge a fee or waive the fee. Some states set the compensation for trustees under state law.
- d. Knowledge of the settlor: An individual may have a better working knowledge of the settlor and the settlor's goals in providing for the trust beneficiaries. An institutional trustee may not.

You may use a trustee "team" – an individual trustee and an institutional trustee – as co-trustees to combine the advantages of personal knowledge with professional expertise.

### **Should I use a revocable living trust?**

A revocable living trust is used when the trust creator wants to protect against incapacity. Trust grantors consider these advantages of a revocable living trust:

- a. Professional management: You may not have the time or ability to manage your assets the way you want. You appoint a trustee such as a trust department or trust institution to do that.
- b. Probate avoidance: Upon death, a revocable living trust becomes irrevocable. The trust assets bypass the probate process and are managed or distributed in accordance with the trust terms.
- c. Asset protection: A trust can protect beneficiaries from others, such as protecting child inheritances from divorced parents.
- d. Control: The trust grantor selects the beneficiaries and the trustee. The grantor can be the trustee and retain the power to appoint and select successor trustees and beneficiaries. You can modify the trust terms when you believe a change is necessary because you still retain control over the assets.

If you are considering using a living trust, read the Federal Trade Commission's [Living Trust Offers How to Make Sure They're Trust-worthy](#).

### **Should I use an irrevocable living trust?**

Since you **cannot** change an irrevocable living trust after you create it, there are some advantages to it. When you establish one, you make an immediate gift of the assets. This may result in tax savings by removing the trust assets from your estate and protection of the trust assets from the claims of courts and creditors.

### **Are there disadvantages to a living trust?**

Yes, since living trusts are not under direct court supervision a trustee who does not act in your best interests or in a prudent or reasonable fashion accountable to you or your beneficiaries may take advantage.

Sometimes the cost of preparing a living trust and other documents will be more than preparing just a will.

Upon creating a living trust, it must be “funded”, that is assets must be transferred to the trustee. For example, deeds to real property must be prepared and recorded, bank accounts transferred, and stock and bond accounts or certificates transferred as well. Completing this paperwork is necessary to put the assets under the trustee’s management. If you do not transfer assets into the trust, you have defeated the purpose of creating it because the trustee has nothing to manage.

### **Do I still need a will if I have a living trust?**

Yes, in many cases you still need a will even if you have a living trust. Your will distributes any property that you did not transfer to the trust and that is subject to probate. Your will also can provide for the guardian of the person and property of your minor children.

### **What happens if I have a living trust and I become incapacitated?**

This is one of the most important reasons to have a living trust. If you are the trustee of your living trust and you become incapacitated, your successor trustee will take over the responsibility for managing the assets on your behalf.

### **When should I use a testamentary trust?**

A testamentary trust is created in your will. It becomes effective when you die. It is funded with the assets as directed by your will. A testamentary trust is frequently used as a contingent trust for minor children in case there is no surviving parent while the children are under eighteen (majority). This trust allows you to name a trustee to manage the property for minor children. Parents who think eighteen is too young to inherit property can select an older age, such as twenty-one or twenty-five. The trustee would continue to manage the property for the child until the child reached the age set in the trust.

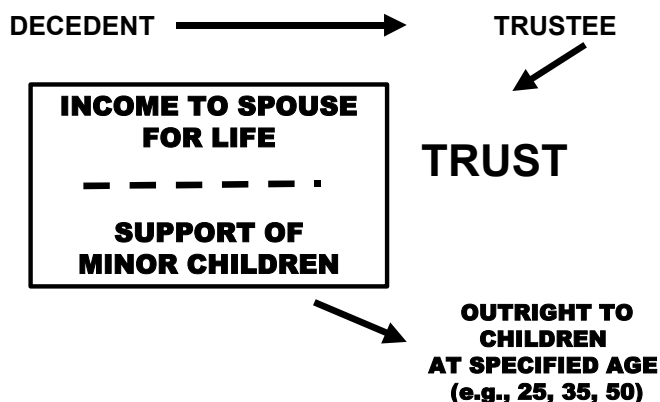
Your trustee can be another person or institution if you prefer someone other than your children’s guardian. A testamentary trust also can be used where one parent does not want the other parent to control or have access to the property going to the children such as divorced or separated parents.

If you use a testamentary trust for minor children, you have to decide how and when to distribute the property. One method is to give each child a separate share of the property in a separate trust for each. This may end up with higher costs overall for jointly owned property as each trust operates independently of the others. Also, some

of the children may end up with their shares being used faster than the other children depending on health, education, and other support payments.

## **Simple Family Trust**

### **Distribution & Control**



Another possibility is to use a “pot” trust followed by separate shares. This is particularly useful if you have children whose ages vary greatly. In a “pot” trust, the assets designated to pass to your children are held in one combined trust until the youngest child reaches the age you set in the will. The trustee will manage all of the property for the common benefit of all the children until the last one reaches the stated age. Then, the trust assets are divided into equal shares, and each child receives outright distribution of his or her respective share.

Another use of a testamentary trust is for a special needs trust. This trust holds assets for a disabled person, such as a mentally or physically handicapped person, to be used for the disabled person’s benefit. Often these trusts contain strict limits on distributions so that the disabled person does not lose any government benefits.

One other common use of a testamentary trust is to control asset disposition. This occurs often when one or both of the spouses have children from a previous marriage, or if the testator is concerned about the possibility of the surviving spouse remarrying or disinheriting the children. In this situation, it is important to carefully consider who will serve as trustee.

### **Can I use a trust for federal estate tax planning?**

Sometimes. To determine if one is appropriate for you, consult an attorney. As discussed in our [FEDERAL ESTATE TAXES](#) chapter, the federal estate tax is based on all property transferred at death. Your gross estate is valued at the fair market value on your death (or, if elected, on the alternate valuation date six months after the date of death). As of January 1, 2002, there is no federal estate tax owed on estates up to \$1,000,000. Consequently, many military personnel may not need federal estate **tax** planning. There may, however, be a need for estate planning, especially for those with young children.

For those who desire to lower or eliminate federal estate taxes, several trusts are commonly used.

**Bypass trust:** This trust is sometimes also called a “credit shelter trust” or a “family trust”. It can also take the form of a “disclaimer credit shelter trust”. It takes advantage of a decedent’s \$1,000,000 federal estate tax credit. Assets in a bypass trust avoid federal estate tax. The surviving spouse and children ordinarily receive income and discretionary principal benefits from the bypass trust during the lifetime of the surviving spouse.

**Marital trust:** This trust **postpones** the federal estate tax during the life of the surviving spouse.

**Irrevocable life insurance trust:** The owner of a life insurance policy can transfer the policy to an irrevocable life insurance trust. This trust can own a life insurance policy on the life of the trust creator. The life insurance policy benefits then avoid being taxed in the former owner’s federal gross estate provided over three years pass after the former owner irrevocably transferred policy ownership to the trust. Once the former owner transfers the policy to the trust, he or she loses the ability to change the policy beneficiary.

**Generation-skipping trust:** A generation-skipping transfer tax is designed to ensure that property does not skip a generation without a transfer tax being assessed. The tax rate for this tax is 50 percent in 2002. A generation-skipping transfer occurs most commonly when a transfer is made to a person who is two generations or more younger than the person who is transferring the property. For example: a grandparent direct to a grandchild skipping the grandchild’s parent. The current lifetime exemption for this tax is \$1,100,000 as of 2002, meaning a taxpayer can protect this amount from tax. Thus, this type of trust is designed to avoid federal estate taxes upon the death of the trust beneficiary but still must comply with the generation-skipping transfer tax rules.

### **Charitable trusts**

Some people who want to leave money to charities use a trust for income tax or federal estate tax reasons. A charitable trust can provide a current income tax deduction, income for the creator of the trust or the trust beneficiaries, and a way to avoid paying capital gains taxes on highly appreciated property. There are several types of charitable trusts.

**Charitable remainder trusts:** This trust allows the trust creator to make a charitable gift now while still receiving the income from the assets for use during his or her lifetime. The remainder interest—which is the right to the property left in the trust when the trust ends—goes to the charity. The end of the trust term is usually at the death of the trust creator or when the last beneficiary reaches a certain age.

**Charitable lead trusts:** This trust distributes the income interest to the charity while the trust creator or the trust beneficiaries keep the remainder interest. A lead trust



can be established as a guaranteed annuity in which the charity receives constant income payments or in a manner based on a fixed percentage of the value of the trust assets as revalued annually.

### **Qualified Income Trust (“Miller Trust”)**

In some states there is a limit on the amount of income allowed for Medicaid nursing home eligibility. Therefore, some nursing home residents who have retirement incomes at (or above) a certain dollar level do not qualify for Medicaid yet do not have enough money to make the nursing home payment. Section 1396p of Title 42 of the United States Code permits an income diversion trust that allows residents of a nursing home caught in the income gap to place retirement income in trust so that it is not counted for Medicaid eligibility. The law requires that only pension, Social Security, and other income may be placed in the trust. This trust is irrevocable. Additionally, it must contain a reversion clause that the State will receive all amounts remaining in the trust upon the death of the beneficiary up to the amount equal to the total medical assistance paid by Medicaid on behalf of the beneficiary. The trustee must pay the beneficiary a monthly personal needs allowance; pay the spouse, if any, of the beneficiary an amount sufficient to provide a minimum monthly maintenance needs allowance; and pay from the funds remaining the cost of medical assistance provided to the beneficiary.

### **“Special needs” trusts**

This trust is designed to assist a beneficiary with a disability. Typically they are created by a parent or other family member of the person with the disability. This can be either a testamentary or *inter vivos* trust. Special care is needed in drafting this type of trust to take into account the beneficiary’s qualification, if any, for governmental support programs such as Medicaid and Social Security.

## **LEARN MORE**

- American Bar Association’s [Guide to Wills & Estates, Chapter 4: Trusts](#) (PDF, requires [Adobe Acrobat Reader](#)); [Chapter 5: Living Trusts](#) (PDF, requires [Adobe Acrobat Reader](#))
- From the Federal Trade Commission [Living Trust Offers How to Make Sure They’re Trust-worthy](#)
- From FedWeek, [Putting Your Trust in Trusts](#).

This summary briefly covered some of the trusts that might be useful in your estate plan depending on your goals. Consult an attorney for advice in your specific situation.

## CHAPTER 4: LIFE INSURANCE IN ESTATE PLANNING

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### INTRODUCTION

A life insurance policy is a contract between you and an insurance company. You pay a certain amount of money (a "*premium*") periodically for a certain amount of insurance coverage to be paid to your beneficiaries when you die.

Life insurance may play an important role in your estate plan. You can use it to provide financial security for your family members. Using it, you can create an estate large enough to assure adequate income for your family upon your death (see [How MUCH IS ENOUGH](#) later). In determining your life insurance needs, consider the desired monthly income you would like your survivors to have, as well as the various survivor benefits available, including the [Survivor Benefit Plan](#) and [Social Security](#). Discuss your needs, policy types, and beneficiary designations with a Legal Assistance attorney to be sure how your life insurance policies fit your estate plan.

This chapter briefly discusses life insurance, Servicemember's Group Life Insurance ([SGLI](#)), and beneficiary designations.

### FREQUENTLY ASKED QUESTIONS

#### **How much life insurance should I have?**

That depends on many factors. Everyone's life insurance needs differ. Why are you buying it? If for financial security to your survivors, calculate how much income will be needed by determining current and projected future expenses:

- Housing. Total your rent or mortgage payments, telephone, utilities, food, transportation, and other monthly living expenses. If you live in military housing, calculate how much it would cost to rent or own a suitable home for your family.
- Child care. How much do you pay now (or would your spouse pay if he/she had to work) after your death?
- Education. Calculate school or college expenses.
- Debt. Add up your debts – for example, auto loans and credit cards.
- Funeral expenses. Estimate all the costs associated with your funeral and burial.

Next, determine what you have – your assets – your savings, investments, and any home equity, benefits paid to your spouse after your death, such as Survivor Benefit Plan payments, Social Security benefits for your spouse and children, and Veterans Affairs benefits. Now, subtract the estimated expenses from your assets. If the expenses are greater, life insurance could fill the gap.

Several web sites offer interactive "calculators" to help you. For example: visit the General Electric [Center for Financial Learning's Life Insurance](#) page; USAA's [Education Foundation's Life Insurance Center](#); [Quicken.com's Life Insurance Center](#); [Smart Money.com's Insurance Planner](#); Money.com's [Financial Strategy Center Insurance Department](#); Mutual of New York ([MONY](#)) [Resource Center's Insurance](#) page; & the [Consumer Insurance Center's Life Insurance Center](#).

Ric Edelman, a Washington DC area financial planner has an informative web [site](#). He offers this suggestion to determine if you have enough life insurance: “*Cut in half and drop a zero.*” Here is how his simple formula works.

- Take the face value of your life insurance. We will use your \$250,000 SGLI insurance policy.
- Cut that number in half - \$250,000 becomes \$125,000.
- Next, drop a zero - \$125,000 become \$12,500.
- That \$12,500 is the annual income your family would receive if you left them \$250,000 in insurance and they invested it. (By the way, that is taxable income, so your family would get about \$900 per month to spend.)

According to the [American Council of Life Insurers](#), the average U.S. household has \$168,700 in life insurance.

Learn more about [Insurance](#) on Ric Edelman’s site.

### **Is life insurance taxed?**

Life insurance proceeds paid to your beneficiary are not subject to federal income tax. If you own the life insurance policy when you die, however, the proceeds are included in the value of your estate for **estate tax** purposes. You are considered an owner of a policy if you have the right to borrow against it, change the beneficiaries, or revoke, cancel, or assign the policy.

To remove the life insurance proceeds from your estate, you could have someone else, such as your beneficiary, own the policy. For example, if your child is the beneficiary of the life insurance policy, your child could own it. Then, when you die, the proceeds are not in your estate. You could establish an irrevocable life insurance trust to own the life insurance policy on behalf of your beneficiaries.

### **If I am terminally ill may I sell my life insurance policy?**

Maybe, if your policy includes it. SGLI has an [accelerated benefit option](#). The Federal Trade Commission offers [Viatical Settlements: A Guide for People with Terminal Illnesses](#) with links for more information.

### **How does SGLI fit?**

Servicemembers’ Group Life Insurance ([SGLI](#)) is a military group term life insurance policy administered by the Office of Servicemembers’ Group Life Insurance (OSGLI). When you die, the money will be paid to the beneficiaries you named on your beneficiary designation form. Because it is term insurance, it has no cash or loan values, and it does not pay dividends. You are automatically covered for the maximum amount of insurance—currently \$250,000—on your first day of active duty or active duty for training, unless you decline or reduce your coverage. The amount of coverage you select determines the premium you pay.

### **How do I name a beneficiary?**

You may name any person or organization as your principal or contingent (alternate) beneficiary. You may change your beneficiary designation at any time (unless you made an irrevocable designation). You must complete Form SGLV 8286, *Servicemembers' Group Life Insurance Election and Certificate*, and submit it to your military service, usually to your personnel office, for your beneficiary designations to be effective. You may designate more than one principal beneficiary to receive the insurance proceeds. If you do name more than one, you must indicate the share each will receive. For example, you may name your brother, David, and your sister, Carol, as your principal beneficiaries. You then need to indicate their respective shares, such as "50% each" or "30% to my brother David and 70% to my sister Carol".

**Note:** after nominating a guardian and alternate guardian in your will for your minor children, designating your life insurance policy beneficiary and alternate beneficiary is the most important part of your estate plan. For details on beneficiary designation see AR 600-8-1, [\*Army Casualty Operations/Assistance/Insurance\*](#), paragraph 11-29. Check the Chapter 11 *Figures* associated with SGLI beneficiary designations for more information.

### **How are the insurance proceeds paid?**

SGLI insurance proceeds may be paid to your beneficiaries in a lump sum or in 36 equal payments. You elect which method on the form SGLV 8286. If you do not select an option, the proceeds will be paid a single lump sum.

### **How do my beneficiaries file a claim when I die?**

Your beneficiaries need to file a claim by submitting a form SGLV 8283, *Claim for Death Benefits*, to the OSGLI. The beneficiaries should include a copy of the death certificate to expedite processing. Once OSGLI receives proof that an insured member died, it will pay the proper beneficiaries the amount for which the member was insured. A beneficiary cannot transfer or assign SGLI proceeds to any other person or entity. Additionally, payments of SGLI benefits are not subject to the claims of creditors of the insured or creditors of the beneficiaries.

### **What is the SGLI Family Coverage program?**

The Veterans' Opportunities Act of 2001 extended life insurance coverage to spouses and children of active duty military members and Ready Reserve members insured under the SGLI program. The coverage began November 1, 2001. Dependent children under age 18 are automatically covered. Children between 18 and 23 who are full-time students are also covered. Additionally, a child who before the age of 18 was declared legally incompetent is eligible.

### **What is the amount of coverage for my spouse and children?**

You may purchase up to \$100,000 of SGLI coverage for your spouse in increments of \$10,000. You cannot, however, purchase more coverage for your spouse than you have for yourself. Each eligible child is automatically insured for \$10,000.

### **What is the cost for Family Coverage?**

SGLI coverage for eligible children is free. The cost of your spouse depends on the age of your spouse and the amount of coverage you select. For example, \$100,000 coverage for a spouse who is in the age group 34 and below costs \$9 a month. The same coverage for a spouse who is in the 45 to 49 year old age group costs \$20 a month. The premiums for your spouse's coverage will be automatically deducted from your military pay.

### **What if I do not want SGLI Family Coverage?**

If you do not want coverage for your spouse or children, you must complete a form SGLV 8286A, *Family Coverage Election*, and submit it to your personnel office. Because coverage for your children is free, you may want to carefully reconsider a decision to delete your children from family coverage.

### **What if I want less than the automatic amount of coverage for my spouse?**

Your spouse is automatically covered for \$100,000 unless your coverage is less. Then your spouse is covered for the same amount as you. If you want to vary your spouse's coverage from the automatic amounts complete a form SGLV 8286A and submit it to your personnel office.

### **How does an irrevocable life insurance trust (ILIT) work?**

An ILIT can keep insurance proceeds out of your estate and provide cash for estate taxes. These are used when an estate includes significant illiquid assets, such as IRAs, real estate, or a family business. An ILIT works like this: You create an irrevocable trust and name a trustee and the trust's primary and contingent beneficiaries. You add a special provision that allows you to make gifts, and the ILIT trustee buys a policy on your life. Annually, you give money to the trust to pay the insurance premium. The trustee notifies the beneficiaries allowing them to withdraw your gifted money but they do not, so the trustee uses the money to pay the premiums. The life insurance proceeds will not be part of your estate if you do not retain ownership rights to the policy and you gave up legal control of the trust.

## **LEARN MORE**

- [SGLI/VGLI Handbook](#)
- [How Divorce Affects Your Life Insurance Needs](#) explains life-changing events that may require ex-spouses to buy and keep a life insurance policy.
- [Insure.com - Life Insurance](#)
- [American Council of Life Insurers \(ACLI\)](#)
- [Life Insurance and Life Insurance Trusts: Basics and Beyond](#)
- From [Knowledge Source.com](#), [Twenty Questions on Irrevocable Life Insurance Trusts for Second to Die Policies](#) (PDF, requires [Adobe Acrobat Reader](#))

Read more in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed above or in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.



## CHAPTER 5: SURVIVOR BENEFITS

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### INTRODUCTION

Financial security for your survivors is one important goal of estate planning. Military members often shape their estate plans based on non-disability, Government benefits available to survivors in case of death on active duty or in retirement. This chapter briefly surveys the financial basics of the most common Federal benefits. For information on benefit eligibility, see DA Pamphlet 608-4, [A Guide for the Survivors of Deceased Army Members](#) (1989) or DA Pamphlet 360-526, [Once a Veteran](#) (1992).

Appendix [C – How MUCH Do I NEED?](#) incorporates the monthly payment information in a worksheet to help you determine your financial security goal for your survivors as you prepare your estate plan.

### FEDERAL BENEFITS

These are the usual benefits to survivors when a military member dies on active duty.

- **MONTHLY PAYMENTS:** Your survivors may receive one or more of these. The actual amount may vary depending on the year of death. Consider these in your estate plan. They may affect your investment strategy and financial goals.

### DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

The Department of Veterans Affairs (VA) pays DIC, a tax-free monthly payment to eligible survivors of deceased members who die from a service connected disability or injury. Its objective is to compensate surviving spouses (\$935 per month in 2002), children (\$234 per month per child), and parents for the death of any veteran who died because of a service-connected disability, or while in the active military service. For more information, see [DIC rates](#).

### SURVIVOR BENEFIT PLAN (SBP)

SBP is a Federal program that benefits surviving spouses and/or children of military members. It pays an annuity of up to 55% of your monthly retired pay if you are an SBP participant or are eligible for SBP when you die. SBP payments are reduced by DIC and Social Security payments. For more information, see our [SURVIVOR BENEFIT PLAN](#) chapter.

### SOCIAL SECURITY FOR SURVIVORS

The [Social Security Administration](#) (SSA) administers Social Security (SS) payments. Social Security is based on a simple concept: when you work, you pay taxes monthly into the SS system, and when you retire or you become disabled, you, your spouse, and your dependent children receive monthly SS benefits based on your earnings. Your survivors collect benefits when you die. The monthly payment varies, but can range from several hundred dollars to several thousand.

Annually, about three months before your birthday, SSA mails [YOUR SOCIAL SECURITY STATEMENT](#) to help you understand your updated earnings record and potential benefits for you and your survivors when you die. Consider this information when projecting the financial needs of your survivors. The SSA web site includes [Benefit Planners](#) and online [calculators](#) to help you estimate your SSA benefits. For more information, see [Survivor Benefits](#) and [Social Security: Understanding the Benefits](#).

## DEPENDENT'S EDUCATIONAL ASSISTANCE (DEA)

DEA provides education benefits for the spouse and dependent children of veterans who are permanently and totally disabled from service connected causes, veterans who died in service or who died of service connected causes, and certain other veterans and service members, such as those currently missing in action or captured. The VA determines eligibility. This benefit may be used for pursuit of a college degree, courses leading to a certificate or diploma from business, technical or vocational schools, apprenticeship, and on-the-job training programs. Benefits for correspondence courses are available to spouses only. The program provides up to 45 months of education or training. The full-time training rate is \$670 per month in 2002. For more information, see [Summary of Survivor Educational Benefits](#).

## THRIFT SAVINGS PLAN (TSP)

Beginning in late 2001, military members could participate in a military TSP. Those choosing to do so could designate beneficiaries to receive monthly payments when the TSP participant died. The payment amount depends on the participant's contribution and investment return. For more information, see the [TSP](#) web site.

- **ONE TIME PAYMENTS:** When you die, your survivors may receive one or more of these lump sum payments. The largest is usually your life insurance (SGLI if you die while covered). Together, without considering your life insurance coverage, these benefits may exceed \$6,000 - 7,000.

## DEATH GRATUITY

The local finance office will pay \$6,000 to your survivor if you die on active duty (or within 120 days after release from active duty if a disease or injury incurred while on active duty caused your death). Apply by submitting DD Form 397, [Claim Certification and Voucher for Death Gratuity Payments](#), to local finance office.

## BURIAL REIMBURSEMENTS

The [FUNERAL & BURIAL ARRANGEMENTS](#) chapter mentions possible reimbursements, ranging from several hundred dollars to several thousand. For more information, also see [Burial Allowance Benefits](#) (VA web site). Current [rates](#).

## SOCIAL SECURITY DEATH PAYMENT

The SSA may pay a single death payment of \$255 to your survivors when you die. For more information, see [Survivor Benefits](#) and [Social Security: Understanding the Benefits](#).

## UNPAID PAY & ALLOWANCES

Military finance will pay survivors of military members dying on active duty the pay due the member at death (from the previous pay date through the date of death) including allowances and all accrued leave (even that over 60 days). For more information, see [Payments on Behalf of Deceased Members](#) in the [Military Pay Policy & Procedures – Active Duty & Reserve Pay](#), of the [DoD Financial Management Regulation, DoD 7000.14-R](#).

## LIFE INSURANCE/SGLI

You may have your life insurance paid to your named beneficiaries in a single, lump sum payment or in 36 monthly payments. Frequently, military members have SGLI paid in a lump sum. Insurance to benefit minor children will ordinarily not be paid directly to

the minor children, but may be paid to a guardian, a custodian, or a trustee of a trust for their benefit. The amount paid is based on the amount of coverage you paid for. SGLI may range as high as \$250,000 (2002). Consider your life insurance proceeds invested to yield monthly income for your beneficiaries in your survivors' financial security planning. You might choose to fund a trust with SGLI and commercial life insurance to establish a minimum income stream. For more information on life insurance, see our [LIFE INSURANCE IN ESTATE PLANNING](#) chapter.

- **OTHER BENEFITS:** After you die your survivors may be eligible for non-economic benefits such as [Transition/Relocation Assistance](#), [Medical Care](#), [PX](#), [Commissary](#), & [Legal Services](#). These are valuable services that your survivors should know about. Using them may save your survivors money. Also see the VA's [Federal Benefits for Veterans and Dependents](#) (PDF version; 2002 Edition), a booklet that lists the variety of federal benefits available to veterans and their dependents. Also see GovBenefits, featuring 55 federal benefit programs. Look for it under Online Services for Citizens on FirstGov's homepage <http://www.firstgov.gov>.

[Tragedy Assistance Program for Survivors](#) (TAPS) is a national non-profit organization made up of, and providing services to, those who lost a loved one on active duty with the Armed Forces. TAPS offers a national military survivor peer support network, grief counseling referral, case worker assistance and crisis information, all available to help families and military personnel cope and recover. Free services available 24 hours a day. Call 1-800-959-TAPS (8277); email: [tapsak@aol.com](mailto:tapsak@aol.com).

## SUMMARY

This chapter briefly reviewed the most common survivor benefits when a military member dies on active duty.

Money Payments		Other
Monthly	One Time	
Dependency & Indemnity Compensation (DIC)	Death Gratuity	Relocation
Survivor Benefit Plan (SBP)	Burial Reimbursements	Medical Care
Social Security	Social Security	PX
Dependent's Educational Assistance (DEA)	Unpaid Pay/Allowances	Commissary
Thrift Savings Plan (TSP)	Life Insurance/SGLI	Legal Services

You may find it useful to refer to these when planning for your survivors' financial security and reading the [HOW MUCH DO I NEED](#) appendix.

## CHAPTER 6: SURVIVOR BENEFIT PLAN

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### INTRODUCTION

The Survivor Benefit Plan (SBP) is a Federal program that benefits surviving spouses and/or children of military members. It pays an annuity of up to 55% of your monthly retired pay if you are an SBP participant or are eligible for SBP when you die.

When planning your estate, consider SBP as you try to determine how much money your survivors will have available after you die. You may have investments, savings, or other income sources to meet some or all of the projected financial need. After you estimate that need and compare it with your available wealth and survivor's other income, decide on SBP. Military members often use life insurance (Servicemembers Group Life Insurance or commercial policies) with their financial resources and SBP to yield enough regular income to cover the projected need.

### FREQUENTLY ASKED QUESTIONS

#### **What is the cost of SBP for spousal coverage?**

To compute the SBP cost, determine:

- Who is the beneficiary (the person you select to receive the money);
- Your gross monthly retired pay; and
- Your base amount.

SBP provides an annuity of 55% of a base amount of retired pay you elect (less the Social Security offset at age 62 or older). The maximum base amount is your gross monthly retired pay. However, the base amount can be as low as \$300. You decide your base amount. Here are possible retired pay base amounts, monthly costs, monthly annuities until age 62, and monthly annuities after age 62 for spouse-only coverage.

Retired Pay <i>Base Amount</i>	Monthly Cost <i>of SBP</i>	Beneficiary's SBP <i>Payment to age 62</i>	Beneficiary's SBP <i>after age 62</i>
\$300	\$7.50	\$165	\$105
\$512	\$12.80	\$281	\$179
\$800	\$41.60	\$440	\$280
\$1600	\$104	\$880	\$560
\$2000	\$130	\$1100	\$700
\$2800	\$182	\$1540	\$980

If you became a member of the uniformed services on March 1, 1990, or later, you will use the "6.5%" formula. If you were a member of the uniformed services before March 1, 1990, you have the option of having SBP costs calculated under the original costing formula. That formula takes the first \$300 of the base amount at a rate of 2.5 percent. The remainder of the base amount is then computed at the rate of 10 percent. The two results are then added to find your monthly cost. You get to use whichever method results in the lower cost.

**EXAMPLE ONE:** Member elects spousal coverage. His gross monthly retired pay is \$2,100. He selects a base amount of \$2,100.

ORIGINAL FORMULA:	Base	\$2,100
	First calculation	$\$300 \times 2.5\% = \$7.50$
	Second calculation	$\$1,800 \times 10\% = \$180$
	Total cost	\$187.50 per month

6.5% FORMULA:	Base	\$2,100
	Calculation	$\$2,100 \times 6.5\% = \$136.50$
	Total cost	\$136.50 per month

This example reflects a member paying a monthly cost of \$136.50 so that the spouse can receive a monthly SBP annuity of \$1,155 upon the member's death until the spouse is age 62. Once the spouse reaches age 62, the annuity will be reduced to about \$735 per month because of Social Security.

**EXAMPLE TWO:** Member elects spousal coverage. His gross monthly retired pay is \$2,100. He selects a base amount of \$300.

ORIGINAL FORMULA:	Base	\$300
	Calculation	$\$300 \times 2.5\% = \$7.50$
	Total cost	\$7.50 per month
6.5% FORMULA:	Base	\$300
	Calculation	$\$300 \times 6.5\% = \$19.50$
	Total cost	\$19.50 per month

This example reflects a member paying a monthly cost of \$7.50 so that the spouse can receive a monthly SBP annuity of \$165 upon the member's death until the spouse is age 62. Once the spouse reaches age 62, the annuity will be reduced to \$105 per month.

**If I am not married and have no dependent children when I retire, what happens if I get married or have a child later?**

You can enroll in SBP later if you get married or have a dependent child. However, you must enroll in SBP within one year of your marriage or your addition of a child.

**What happens if my spouse remarries after getting SBP payments?**

If your surviving spouse remarries before age 55, the annuity payments will end. If that marriage ends, the spouse can once again receive SBP payments. If your surviving spouse remarries on or after age 55, the annuity payments continue uninterrupted.



## LEARN MORE

- The Retirement Services page of the [Deputy Chief of Staff G-1 \(ODCSPER\)](http://www.odcspcr.army.mil/default.asp?pageid_16f) web site, [http://www.odcspcr.army.mil/default.asp?pageid\\_16f](http://www.odcspcr.army.mil/default.asp?pageid_16f), includes detailed information on the SBP, including an *SBP Booklet* explaining SBP in detail, SBP Fact Sheets ([Child Coverage](#), [Former Spouse Coverage](#), [Member Remarriage](#), [SBP and Taxes](#), [Premium Worksheet](#), [Spouse Coverage](#), [Financial Analysis](#), [Insurable Interest Coverage](#), [Social Security and SBP](#), [Supplemental Survivor Benefit Plan](#), [VA Payments and SBP](#), [Withdrawal from SBP](#), & [Reserve Component SBP](#)), [SBP Computer Programs for 2002](#), [SBP & Commercial Life Insurance Comparison](#), [The Survivor Benefit Plan \(SBP\) and Social Security](#), [The Negatives of SBP: Are They Really?](#), & [DA Briefing Slides with Text](#)
- The Retired Officer Association (TROA):  
[SBP Road Map](http://www.troa.org/Booklets/SBPMRM.asp) <http://www.troa.org/Booklets/SBPMRM.asp>  
[SBP Made Easy](http://www.troa.org/Booklets/SBPMEZ.asp) <http://www.troa.org/Booklets/SBPMEZ.asp>  
[Help Your Surviving Spouse Now](http://www.troa.org/Booklets/HYSS.asp) <http://www.troa.org/Booklets/HYSS.asp>
- [AR-PERSCOM](#)'s [Retirement](#) page includes SBP information, and a calculator to estimate RC SBP.
- [Calculate an Estimate of RCSBP Cost](#)
- Randolph AFB SBP Web site: <http://www.afpc.randolph.af.mil/SBP/>
- AF [Casualty Services](#): [Active Duty Benefits](#); [Retiree](#)
- Department of Defense Financial Management Regulation 7000.14-R, Volume [7b](#), [Chapter 42, Survivor Benefit Plan](#), [Chapter 43, Survivor Benefit Plan - Elections And Election Changes](#), and chapters to 58.
- [DFAS Retired - Annuitant Pay Survivor Benefits Guide](#)
- ODCSPER RSO [Handbook For Retired Soldiers & Family Members](#) covers: Introduction; Records and Files; Military Status; Employment Restrictions; Military Retired Pay; Taxation of Retired Pay; Medical Benefits Burial and Military Honors; Survivors Assistance; Survivor Benefits; Retirement Homes; Uniformed Services Former Spouses' Protection Act; VA Benefits; Social Security; References and Abbreviations

Consult a retirement services officer or legal assistance attorney for more details on SBP.

## CHAPTER 7: POWER OF ATTORNEY

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### INTRODUCTION

A power of attorney is a written document in which you name someone as your attorney in fact or agent to perform the actions described in the document you signed. You create a power of attorney when you sign a notarized document legally authorizing another person to act on your behalf. Your power of attorney is a very powerful legal document that you should use cautiously. For example, you may use it to:

- allow a friend to sell your car,
- let your spouse ship your household goods,
- authorize a relative to take your child to the hospital for medical care,
- to buy or sell property, or
- create valid debts in your name that will be your responsibility.

Your power of attorney gives your agent authority to make decisions and act for you. You may give a few powers or you may give many powers. Most powers of attorney last from a definite start time for a set time (for example one year). You may issue a power of attorney that lasts an indefinite period of time. Many businesses, however, seldom accept a power of attorney that is more than one or two years old because of uncertainty that the agent is still authorized to act.

### FREQUENTLY ASKED QUESTIONS

#### **When should I use a power of attorney?**

Most often, you may use a power of attorney when you cannot be present and you want someone to accomplish something for you. For example, you want your agent to sell your car while you are deployed. You also may want to have a power of attorney for certain emergency situations. Depending on the purpose—what you want your agent to do—and the length of your absence, you may wish to put certain limiting instructions in your power of attorney. You may use a *durable* power of attorney if you want it to continue in effect if you become disabled or incapacitated. If you do not have a durable power of attorney, your agent's authority to act ends if you become disabled or incapacitated.

**NOTE:** third parties (banks, businesses) need not accept or acknowledge your power of attorney; it is totally within their discretion. Some businesses and government agencies (Internal Revenue Service) require you use their form. Check with the business or agency where your agent will use your power of attorney to be sure it will be accepted.

#### **Who should I name as my agent in my power of attorney?**

Someone you trust. You may name your spouse, a relative, or a trusted friend. The person you designate must be at least 18 years old. In addition, you should make sure the person can handle your affairs and carry out your wishes. Finally, the person should be trustworthy, mature, and capable of understanding the great responsibility that goes with a power of attorney. Keep in mind that your agent will not bear the responsibility of his or her actions while acting under your power of attorney - you will. Your agent's actions legally bind you. A power of attorney is, in a sense, a blank check.

### **What are the types of powers of attorney?**

There are general powers of attorney and specific or special powers.

- A general power permits your agent to do any act or exercise any power that you have. These are very broad, and should be given only to an agent you trust with the most difficult and sensitive decisions affecting you. In fact, you should only use a general power when a special is insufficient.
- A specific or special power limits your agent's authority to only the act or acts listed in the power.

### **Which type power of attorney should I use?**

The answer depends on why you need one and whether another arrangement may work. Many people use a special power of attorney to authorize an agent to do only one or a few of the items listed below. A general power of attorney allows your agent to do almost everything you could do if you were present. A general power of attorney has enormous potential for abuse. For example, the holder of a general power of attorney can contractually bind you, empty your bank account, or sell your most cherished possessions. The disadvantage of a general power is the same as its advantage: your agent can do almost anything in your name. If you cannot trust your agent watch out! Your car could be sold or your bank account cleaned out. Because of the dangers of a general power of attorney, you should limit its duration. When it expires, third parties cannot rely on it. This protects you from liability for your agent's acts after it ends.

A special power of attorney is normally better than a general power because it is limited and you narrow your agent's authority. If a general power is more than you need (or are willing) to grant, but you still need to appoint another to act for you consider a *special* power of attorney. For example, you might limit your attorney-in-fact's authority to selling a specific car or to shipping your household goods.

### **What are common purposes of a special power of attorney?**

A special power of attorney is often used to:

- Deal with personal property, such as to sell or buy a car.
- Deal with real estate, such as to sell or buy a house or rent an apartment.
- Deal with securities and brokerage accounts, such as to sell or buy stocks.
- Make a contract, such as to sell or buy a stereo, furniture, or television.
- Deal with bank accounts, such as to write and cash checks.
- Deal with life insurance policies, such as to borrow against a policy or to change the beneficiaries.
- Authorize medical care for your minor children.
- Authorize medical care for you.

### **When does my agent's authority to act start?**

The power of attorney can indicate when your agent's power begins and ends.

Sometimes it provides a date or conditions that must occur before the agent can act.

Unless your power states otherwise, your agent may start acting for you once you sign it and give it to your agent.

### **When does my agent's authority to act end?**

Your agent's authority to act for you ends:

- On the date indicated in the power of attorney;
- On the happening of an event described in the power of attorney;
- When you die;
- When you become incompetent if the power is not durable;
- When you revoke the power by signing and dating a statement saying that the power is revoked and providing that statement to the agent;
- When the agent ceases to serve and resigns as the agent, or dies; or
- When a court invalidates the power or otherwise revokes the agent's power.

### **Will a power of attorney work for everything?**

No, there are some actions that cannot be accomplished by using a power of attorney because they are so personal in nature they cannot be delegated to another. For example, a marriage ceremony or the execution of a will cannot be done by power of attorney.

### **All this sounds good. Why doesn't everyone have a power of attorney?**

A power of attorney can be very useful if you have one in effect when you need it. But it can be abused as well. For example, a husband who just separated from his wife might use the power she gave him to clean out her individual bank account. A well-meaning older person might give a power to a younger relative only to discover that the relative squandered and spent the older person's assets. A power always has the potential for being a very helpful or a very dangerous document. Remember you are legally responsible for your agent's acts. Therefore, be very careful in selecting your agent.

### **How can I protect against abuse of my power of attorney?**

There is no guarantee that your power of attorney will not be misused. Here are some suggestions that could help prevent misuse:

- Never give anyone a power of attorney unless there is a real need to do so.
- Do not sign a power of attorney until you need it (keep an unsigned power of attorney in your deployment packet & sign it when you deploy *if* you still need it).
- Always put an expiration date in your power of attorney.
- Make sure your expiration date is for as short a period of time as possible. It is better to make a new one routinely than to try to revoke an old one.
- Never use a general power when a special power of attorney will do.
- Never give a power of attorney to anyone you have not known for an extended period of time and found to be honest.
- If you want to cancel or terminate a power of attorney before it expires, give a Revocation of Power of Attorney to any person who might deal with your original agent. In many states, you may also record the revocation in the office where the original power of attorney was recorded. Remember, it is very difficult to effectively cancel a power of attorney. The safest way to do this is to get back the original and all copies you gave your agent, as well as all copies that may have been made by

banks, realtors, merchants, landlords, and other people who are relying on the power you signed.

**What if I gave my spouse a power of attorney and now we are separating or divorcing?**

When you no longer desire your appointed attorney-in-fact to continue in that position, revoke your power. The best way to do that is to get the original back from your spouse, but that might not be possible. You can also fill out a revocation form (see your Legal Assistance Office) and deliver it to your spouse and all the creditors, banks, companies, and individuals that your spouse has dealt with or is likely to deal with on your behalf. Check with Legal Assistance to be sure of your state law requirements.

**I may deploy or frequently travel. Should I prepare a power of attorney?**

Possibly, but first ask yourself "Do I **need** a power of attorney?"

Some military members prepare a power of attorney for deployment so that their spouse can bank, receive household goods shipments, register automobiles, and do other such things when the military member is away. Many single-soldier parents

and dual-military couples with children use a power of attorney as part of their family care plans in which they set up short- and long-term guardianships for their minor children. You may decide, however, you do not need a power of attorney. If you and your spouse have a joint checking account, your pay is directly deposited into your joint account, and you are not planning on purchasing or selling any large jointly titled items such as a car or a house, then you may not need a power of attorney. However, if you are aware of something of legal significance that could occur while you are away, you should get a special power of attorney for that specific eventuality.

**The bottom line:**  
Tailor your power of attorney to your situation.

**What should I do with my signed power of attorney?**

Give the original to your agent. Tell your agent not to give the original away. If someone wants to have a copy, give a photocopy after showing the original. You should also make a photocopy and keep it with your records so that you know what powers you gave and the expiration date of the power. Please note, that photocopies of your power are generally not accepted because they do not contain your original signature. You should instruct your agent that when signing or endorsing any instrument on your behalf, it should look like this: Your Name by Agent's Name, Attorney-in-Fact.

Example: *John Doe* by *Jane Doe*, Attorney-in-Fact

**What if I want to cancel my agent's authority?**

You may revoke your power of attorney at any time for any reason. The two common ways to revoke a power of attorney before it expires are:

- By destroying the original; and/or
- By executing a "Revocation of Power of Attorney" at your local Legal Assistance office and sending a certified copy of the revocation to any financial institution or other company where the person you named as the grantee in your power of attorney either has conducted business or may conduct business on your behalf.

**Where may I get advice?**

Your installation Legal Assistance staff will prepare a power of attorney.

**LEARN MORE**

Read about power of attorney in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix. Download our Power of Attorney Application to find out what information you need to obtain a power of attorney.

## CHAPTER 8: ADVANCE MEDICAL DIRECTIVES/*LIVING WILL*

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### INTRODUCTION

All states recognize advance medical directives (AMDs) or "*living wills*". It is a document you create while healthy that expresses your desires concerning the medical treatment you want if you cannot speak for yourself.

Under the Patient Self-Determination Act of 1990, all medical facilities receiving Medicare or Medicaid benefits must tell their patients about this law. Making your wishes known about the treatment you would want when you are unable to explain can be very helpful to doctors and to your family. You can do that in an AMD. You may prepare one when you check into a hospital – but you are not required to have one to receive care, treatment, or admission.

Many individuals use both a living will and medical power of attorney (sometimes called a health care proxy). together to indicate their desires.

### FREQUENTLY ASKED QUESTIONS

#### **What is a living will?**

A living will directs your doctor to withhold or withdraw life-prolonging treatment if you are terminally ill or permanently unconscious. It lists the treatments and procedures you do not want. For example, you can specify that you do not want cardiac resuscitation if you are diagnosed with a terminal condition. You can give directions to your doctor to provide only those treatments that will relieve pain and provide comfort. It applies only if you are terminally ill or permanently unconscious.

#### **Where should I keep my living will?**

Once you sign your living will give a copy to your physician to file for future reference. You can also request that a copy be filed in your military medical records. You should review your living will periodically and amend it to reflect any changes you desire.

#### **What is a medical care power of attorney?**

A medical care power of attorney (or health care proxy) is a document in which you name a person to make health care decisions for you when you cannot. It also allows you to provide specific instructions to your representative, or agent, about the type of care you would want. It is often used when you are not terminally ill.

#### **Who can be an agent or proxy?**

It is very important to choose someone you trust to make decisions. Pick someone who knows you well and knows your values and wishes, and is willing to serve as your agent. You can appoint any adult except your doctor, an employee of your doctor, or an employee of your hospital or nursing home. Your agent does not have to be related to you and cannot be held liable for the costs of your care simply by serving as your agent.



### **Are there advantages to naming an agent?**

Yes, since it is impossible to predict every possible contingency in an AMD, having both a living will and a medical care power of attorney covers other kinds of disability, or gray-area cases where it is uncertain that you are terminally ill, or your doctor or state law fail to give your wishes due weight. Your agent can talk with your doctor about your changing medical condition, deciding to authorize or have treatment withdrawn as circumstances change. Additionally, your agent can clarify vague language within your treatment instructions because of the agent's knowledge of the quality of life issues important to you.

### **Do advance directives affect decisions about life support?**

Life support is used to replace or support a failing bodily function. Patients are often put on life support temporarily until their illness is stabilized or cured and their body resumes normal functioning. However, sometimes a patient's body never functions again without the use of life support. To make an informed decision about life support, consider the benefits as well as the burdens of the treatment being offered. A treatment may be beneficial if it relieves suffering or restores body functioning, or it may be burdensome if it causes pain or prolongs the dying process. In your advance medical directive you can state that you want certain life support measures for a specific length of time, with continuation based on your improvement. When making decisions about certain treatments, make sure you understand why the treatment is being offered and what benefits might result from it.

### **What is Cardiopulmonary resuscitation (CPR)?**

CPR is emergency treatment used to restart a patient's heart and lungs when the patient is suffering from heart failure. It may consist of simple mouth-to-mouth breathing and external chest compression, or it may include electric shock, injection of medications into the heart, and open chest heart massage. When used successfully, such as in response to a heart attack or drowning, CPR restores a person's heartbeat and breathing, often allowing the person to resume his or her previous lifestyle. However, the success of CPR depends on a patient's overall medical condition. While age alone does not determine whether CPR will be successful, the illnesses and frailties which occur as one ages often reduces the success rate of CPR. However, if a doctor determines that CPR will not work, it is not provided. When patients are seriously or terminally ill, CPR may not work or may only partially work, leaving the patient brain-damaged or in worse medical condition than before experiencing the heart failure.

### **What are "Do-Not-Resuscitate" orders?**

A "do-not-resuscitate" (DNR) order instructs your doctor and other medical professionals not to perform CPR if your breathing or heartbeat stops. A DNR order must be issued by your doctor and placed in your medical chart. A DNR order is different from a living will and medical power of attorney. A DNR order is a decision about CPR alone and does not relate to any other treatment. If a patient is in a nursing home, a DNR order tells the staff not to perform resuscitation and not to transfer the patient to a hospital for CPR. An adult patient may consent to a DNR order by informing the doctor verbally or in writing, such as in a living will. If you become unable to decide

about your medical treatment and you did not tell your doctor or others about your wishes ahead of time, a DNR order can be written with the consent of someone you chose in a medical power of attorney. It is better to appoint one person to decide about CPR for you to avoid disagreement among family members.

### **Can I provide instructions about pain medication or food and water?**

Many state laws presume people want relief from pain and discomfort and specifically exclude pain-relieving procedures from definitions of life-prolonging treatments that may be withheld. Some states also exclude food and water (also called nutrition and hydration) from the definitions of life-prolonging treatments. However, there is some controversy about whether providing food and water, or drugs to make a person comfortable, will also have the effect of prolonging that person's life. Some people choose to direct that all food, water, and pain relief be withheld if they are comatose or likely to die soon. Others direct to have their lives potentially prolonged rather than face the possibility that discomfort or pain will go untreated. It is extremely important to include your decision in your advance medical directives and discuss this with your family so that they know your wishes.

### **Can I donate my organs in an AMD?**

Yes, your AMD can also include a statement indicating your decision about organ and tissue donation, although many states permit that on your driver's license.

### **When does my living will take effect?**

In general, it takes effect when:

- You are diagnosed to be close to death from a terminal condition or to be permanently comatose; and
- You cannot communicate your own wishes for your medical care orally, in writing, or through gesture; and
- The medical personnel attending you are notified of your written directions for your medical care.

Consult a legal assistance attorney to discuss governing state law.

### **When does my medical power of attorney take effect?**

Your medical power of attorney is effective immediately after you sign and deliver it to your agent unless you include specific language in it that provides it is effective only if or when a certain event occurs.

### **What happens if I do not have a living will or medical power of attorney?**

The doctors treating you will use their discretion and judgment in deciding on medical care. If a question arises about whether surgery or some other medical procedure is authorized, doctors may turn to your spouse, adult child, or other close relative. Problems often arise when family members disagree what treatment is best for the patient. Indeed, disagreements can end up before the hospital's ethics committee for review, or even before a court to decide on the patient's behalf. To avoid putting family members against each other during a period of high emotional stress, prepare your

advance medical directive, clearly stating your wishes about the treatments and procedures you want.

## LEARN MORE

- Use [Partnership for Caring](#)'s site to obtain an [AMD](#) for a particular [State](#). Partnership For Caring is a national nonprofit organization that partners individuals and organizations in a powerful collaboration to improve how people die. Among other services, Partnership for Caring operates a crisis and information hotline dealing with end-of-life issues and provides state-specific living wills and medical powers of attorney. Partnership for Caring's booklet, [Talking About Your Choices](#), introduces you and your family to end-of-life decision making issues. "It's all about talking--talking to your loved ones about your health care preferences; talking to your doctor about your options so that you can make informed decisions. Talking before a crisis can help you and your loved ones prepare for any difficult decisions related to health care at the end of life."
- [On Our Own Terms Moyers on Dying](#)
- [10 Legal Myths About Advance Medical Directives](#) (from the American Bar Association Commission on Legal Problems of the Elderly)
- [Advance Directives Found Key To Reducing Stress For Families Of Hospitalized Patients At The End Of Life](#) (Seniors.gov)
- [Advance Directives & DNRs](#) from About.com has a wide variety of information about death and dying. The site has information about advance directives, caregiving, grieving, funerals, hospice and hosts chats open to the public.
- [Elder Law Issues: Court Refuses Permission for Withdrawal of Feeding Tube](#) (August 2001)
- [What is a Living Will?](#) (November 2001)
- American Bar Association Practical Law, [Health Care Advance Directives](#), provides basic tips and tools.
- American Bar Association Commission on Legal Problems of the Elderly offers: [Shape Your Health Care Future with Health Care Advance Directives](#) (1995)
- [Last Acts](#) is a campaign to improve end-of-life care by a coalition of professional and consumer organizations. We believe in palliative care, focused on managing pain and making life better for individuals and families facing death. This site is for professionals and volunteers working to improve care of the dying.
- AARP [End Of Life Issues](#)
- [Advance Medical Directive - Walter Reed Army Medical Center](#)
- [Aging with Dignity](#). Many AMDs rule out some treatments if the patient is terminally ill, but a stroke or end-stage Parkinson's disease may not be "terminal" within the AMD. The solution is a document that covers the gray areas ahead of time. Visit Aging With Dignity's web site for their *Five Wishes*. *Five Wishes* lets your family and doctors know:
  - Which Person You Want To Make Health Care Decisions For You When You Can't
  - The Kind of Medical Treatment You Want or Don't Want
  - How Comfortable You Want To Be
  - How You Want People To Treat You

--What You Want Your Loved Ones To Know

- Five Wishes is valid in all but 15 states. For a list of where it works, check out <http://www.agingwithdignity.org/>. If a State is not on the list, consider using a State's form (free at <http://www.partnershipforcaring.org/>) and name a health-care proxy who can advocate the client's best interests.
- [\*End-of-Life Care and Organ Donation Decisions A Doctor's Perspective\*](#)
- [Living Will Registry](#) provider of advance directive storage and retrieval, the U.S. Living Will Registry was founded by Dr. Joseph Barmakian to make advance directives more readily available when needed.
- [Guide to Being a Health Care Proxy or Surrogate](#)
- [Caring Conversations Workbook](#), published by the Midwest Bioethics Center, 1021-1025 Jefferson Street, Kansas City, MO 64105-1329 (Tel. 816-221-1100). This is both a workbook and advance directive. Download free @ <http://www.midbio.org/>. A comprehensive do-it-yourself workbook on planning for end-of-life care.

Read more in our Estate Planning Information Center on [Legal Services](#), or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.

## CHAPTER 9: ORGAN DONATION

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### INTRODUCTION

Some military members and spouses donate organs and tissues to help others live. Donating your body or organs has been called the *greatest gift*, as thousands of people now on waiting lists with failing organs agree.

### FREQUENTLY ASKED QUESTIONS

#### **Is organ donation common today?**

Today, medical advances and technology make successful organ and tissue transplants cheaper, easier, and safer than ever. Commonly donated and transplanted organs and tissues include:

- Corneas
- Hearts and heart valves
- Lungs
- Kidneys
- Skin
- Livers
- Bone and bone marrow
- Tendons, ligaments, and connective tissue
- Pancreases
- Intestines

#### **How do I express my wish to be an organ and tissue donor?**

The main way is to complete a donor card (usually witnessed by two people) or when you renew your driver's license. Many state motor vehicle departments have donor cards or contact The Living Bank, <http://www.livingbank.org>. You can get a donor card or form from most hospitals, or from any of the foundations that support organ donations, such as the National Kidney Foundation. Another way to do so is to complete the organ/tissue donation page in our [PEACE OF MIND PLAN](#). If you decide to donate make a written record of your decision. For example, you could complete these choices on a separate piece of paper or a card that you carry:

Upon my death, I wish to donate:

\_\_\_ Any needed organs, tissues, or eyes.

\_\_\_ Only the following organs, tissues, or eyes: \_\_\_\_\_

I authorize the use of my organs, tissues, and eyes:

\_\_\_ For transplantation

\_\_\_ For therapy

\_\_\_ For research

\_\_\_ For medical education

\_\_\_ For any purpose authorized by law.

## LEARN MORE

- [OrganDonor.gov](http://OrganDonor.gov) is one of several web sites with information and resources on organ donation and transplantation. Created by Health Resources & Services Administration ([HRSA](http://HRSA)) & Department of Health & Human Services ([DHHS](http://DHHS)), [OrganDonor.gov](http://OrganDonor.gov) also provides links to information on most state donor programs. DHHS produced a pamphlet: [Organ & Tissue Donation](#) (PDF, requires [Adobe Acrobat Reader](#)). Also see DHHS' [Frequently Asked Questions](#).
- The [Living Bank International](#), a non-profit organization, is dedicated to the enhancement of organ and tissue donation and transplantation. The Living Bank is America's organ and tissue donor registry.
- In addition, The Coalition on Donation sponsors [ShareYourLife.org](http://ShareYourLife.org). It offers [How to Become a Donor](#) and [Myths & Facts](#) about organ donation. E-mail [coalition@shareyourlife.org](mailto:coalition@shareyourlife.org) to request a free donation brochure that has a donor card & family notification form.
- Also see, Soldiers Legal Forum: [Planning Your Gift of Life](#) (Soldiers, December 2001, pages 28-29 (requires Adobe Acrobat Reader)) or read more in our Estate Planning Information Center on our [Legal Services](#) site.
- The [American College of Trust and Estate Counsel's A Legacy For Life - Becoming an Organ or Tissue Donor](#).



## CHAPTER 10: FUNERAL & BURIAL ARRANGEMENTS

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### INTRODUCTION

No one likes thinking about funerals, least of all, his own. A little advance planning, however, may prevent or reduce emotional stress and financial problems for your survivors. You can:

- indicate your wishes for your funeral;
- prevent confusion and differences of opinion among your survivors;
- make your funeral arrangements before you die;
- even pay funeral expenses in advance to eliminate or reduce the financial burden on your survivors;
- decide how to fund your funeral expenses; and
- give directions on the use of your body or organs and tissues for medical research or donation.

In this chapter is information on military funeral honors, pre-funeral planning, and links to Internet sites where you can learn more.

### MILITARY FUNERALS

Those who serve in the military may be eligible for special funeral and burial benefits because of their honorable service. Usually, a Casualty Assistance Officer will assist the active duty military member's survivor(s) with funeral arrangements and explain benefits.

a. Military funeral honors. As of January 1, 2000, all eligible veterans including military retirees are entitled to military funeral honors if requested by a surviving family member. Usually, the funeral honors ceremony will include the folding and presentation of an American flag and the playing of Taps. At least two uniformed military personnel, in addition to a bugler (if available), shall perform the ceremony. If a bugler is not available, a high-grade CD will be used. Ordinarily, funeral directors, rather than the next of kin, arrange for military honors by calling toll free 1-877-MIL-HONR (645-4667) to coordinate the ceremonies.

The Department of Defense [Military Funeral Honors](#) Web site has information on military funerals including frequently asked questions, eligibility, services provided, the [law](#), and links to related Web sites.

The Retired Officers Association ([TROA](#)) publishes [TAPs, A Guide to Military Oriented Burials](#).

b. Department of Veterans Affairs (VA) [burial & memorial benefits](#). For active duty soldier deaths, the next of kin may request a primary burial allowance (up to \$1,750 to cover the expenses of recovery, preparation, casketing, and transportation of the body) and an interment allowance (ranging from \$110 to \$3,100 depending on whether the soldier is buried in a private cemetery or a national cemetery and whether a funeral home service is used).



For eligibility information, see [Burial Allowance Benefits](#) or call Toll-Free 1-800-827-1000. Also see VA [Burial Benefits](#).

c. Headstone or grave marker. The VA furnishes, upon request, at no charge, a headstone or marker for the grave of an eligible veteran. Headstones and markers are provided for eligible spouses and dependents of veterans only in national, military post, or state veterans cemeteries. Flat bronze, flat granite, or flat marble markers, and upright granite or marble headstones are available. The style must be consistent with the cemetery's rules. Any deceased veteran discharged from the U.S. Armed Forces other than with a dishonorable discharge is eligible for a Government headstone or marker. For enlisted members whose service began after September 7, 1980, and for officers whose service began after October 7, 1981, service must have been for at least 24 months, or the period for which the person was called to active duty. See [Headstones & Markers](#).

d. The Presidential Memorial Certificate (PMC) Program. The VA administers the PMC Program. The certificate has the President's signature and expresses the country's grateful recognition of the veteran's service. Eligible recipients may apply through the nearest VA regional office. Eligible recipients include the next of kin, other relatives, or a friend. See [Presidential Memorial Certificates](#) for additional information.

e. Burial in [national](#) and [state](#) cemeteries. Interment of an eligible person is authorized in any national cemetery in which space is available. Assignment of space is made only when burial arrangements are completed.

f. Burial flag. A US flag is provided free to drape the casket or accompany the urn of a deceased veteran who served honorably in the U. S. Armed Forces. It is furnished to honor the memory of a veteran's military service to his or her country. Generally, the flag is given to the next-of-kin, as a keepsake, after its use during the funeral service. Usually, the funeral director will help obtain a burial flag. See the VA's [Burial Flags](#) for more information.

g. Cemeteries. The VA National Cemetery Administration maintains 119 national [cemeteries](#) in 39 states (and Puerto Rico) as well as 33 soldier's lots and monument sites. Also see [State veterans cemeteries](#).

Use the National Cemetery Administration Web site at <http://www.cem.va.gov> or call 1-800-827-1000 for additional information on burial eligibility or other VA benefits.

## FREQUENTLY ASKED QUESTIONS

### **Pre-funeral planning.**

What do you need to know to arrange a funeral for a loved one, or preplan your own? Remember, buying funeral goods and services is a business transaction. Here are common Questions & Answers to consider:

### **What funeral services can I expect from a mortuary?**

Most mortuaries or funeral homes handle many details related to the disposition of a person's remains including:

- Collecting the body from the place of death.
- Storing the body until it is buried or cremated.
- Making burial arrangements with a cemetery.
- Conducting ceremonies related to the burial.
- Preparing the body for burial.
- Arranging to have the body transported for burial.

### **What is the Funeral Rule and how does it protect me?**

The Funeral Rule is a federal regulation that protects consumers, enforced by the Federal Trade Commission ([FTC](#)). According to the [Funeral Rule](#):

- You have the right to choose the funeral goods and services you want (with some exceptions).
- The funeral provider must state this right in writing on the general price list.
- If state or local law requires you to buy any particular item, the funeral provider must disclose it on the price list, with a reference to the specific law.
- The funeral provider may not refuse, or charge a fee, to handle a casket you bought elsewhere.
- A funeral provider that offers cremations must make alternative containers available.

For more information, see [Funerals: A Consumer Guide](#). When a loved one dies, grieving family members and friends often face dozens of decisions about the funeral - all of which must be made quickly and often under emotional duress.

- What kind of funeral should it be?
- What funeral provider should you use?
- Should you bury or cremate the body, or donate it to science?
- What are you legally required to buy?
- What other arrangements should you plan?
- And, as callous as it may sound, how much is it all going to cost?

An increasing trend toward pre-need planning – when people make funeral arrangements in advance – suggests that many consumers want to compare prices and services so that ultimately, the funeral reflects a wise and well-informed purchasing decision as well as a meaningful one. Read the FTC guide for information on prepaying, the Funeral Rule, types of funerals, funeral costs, funeral providers, and more.

### **What disclosures are required under the Funeral Rule?**

These are:

- Telephone price disclosures: A funeral provider must disclose price and option information over the telephone. You do not have to go to the funeral home in person to get this information.
- Embalming: A funeral director must disclose in writing that, with few exceptions, embalming is not required by law. Funeral providers also must not charge a fee for unauthorized embalming unless it was required by law. They must disclose in writing that you have the right to an immediate burial or cremation if you do not want embalming, and disclose in writing that certain funeral arrangements, such as a viewing, may make embalming necessary.
- Cash advance sales: Funeral providers must disclose in writing if there is a surcharge for items that are paid for in advance by the funeral provider on your behalf.
- Caskets for cremation: Funeral providers that offer cremation without a viewing or other ceremony must disclose your right to buy an unfinished wood box for cremation and may not lead you to believe that state or local laws require a casket for direct cremation.
- Required purchases: Your right is to choose only the funeral goods and services you want with some disclosed exceptions. This right must be in writing on the general price list. If there is a specific law requiring you to purchase any item, the funeral provider must disclose the specific law on the statement of goods and services.
- Itemized statement: You must receive an itemized statement with the total cost of the goods and services along with any legal, crematory, or cemetery requirements that compel you to buy any item.
- Preservative claim: Funeral providers are barred from saying you can purchase a particular item or any specific service that can indefinitely preserve the body.

Also check with local and state authorities for other relevant rules. Often the state Department of Health or Attorney General Office can assist you.

### **What is preplanning?**

Preplanning for funeral services allows you to make choices and shop around at a time when emotions are in check. When you preplan, you control the emotional spending often associated with the hurried nature of a funeral. Preplanning is not the same as prepaying. You can plan for your funeral, pick out options, and even set money aside in an account without prepaying for services or goods at a particular funeral home, or with a third party seller.

### **What is a prepayment plan?**

A prepayment plan is a contract for the future delivery of specific funeral goods and services and a funding mechanism to pay for the items. Most plans guarantee the price at the time the services are delivered will be no greater than the price at the time of purchase. You can select your arrangements and pay for them ahead of time. Funding

can be by various means, such as monthly payments, a trust, or specially designated life insurance policies. In 1999, [AARP Research](#) conducted a [Funeral & Burial Planners Survey](#). Among other survey findings, this report described consumer experiences with making advanced funeral and burial arrangements, embalming, shopping for funeral homes, and purchasing caskets, grave liners and burial vaults.

There are legal controls on how the funeral industry can handle and invest funds for future services. However, there are reported abuses of mismanaged and stolen funds. There usually is a long time between entering into a plan and the actual delivery of the services. During that time, many things can change. You may move to another place and not be able to get a refund or may be charged a large cancellation fee. The funeral home may go out of business. Unless the written agreement is very clear, your survivors may be uncertain as to what services were actually prepaid and you will not be available to clarify any confusion. Therefore, you should be cautious about a prepaid plan and investigate its terms fully before deciding to purchase one.

### **Preplanning Your Funeral - General Tips**

- Shop around. Comparison-shopping is very important, but often not so easy to do. Large chains are buying more and more independent funeral homes. This can make it difficult to tell which funeral homes are chains and which are independently operated.
- Review any prepayment plan carefully before you sign and go through it with a trusted advisor, such as an attorney or accountant.
- Visit the facility.
- Investigate the seller's reputation. Call your local Better Business Bureau, funeral boards, and attorney general's office.
- Determine what services you really want.
- If you preplan, or prepay, leave written instructions and make sure your family knows where you left the instructions (consider our [PEACE OF MIND PLAN](#)).

### **Can I leave written instructions about my final ceremonies and the disposition of my body?**

Yes, letting your survivors know your wishes helps them make important decisions during a difficult and stressful time. Providing these instructions in writing and discussing them ahead of time can help your family members and friends be better prepared when you die (consider our [PEACE OF MIND PLAN](#)).

### **What happens if I do not leave any written instructions?**

If you die without any written instructions state law will determine who has the right to decide how your remains will be handled. In most states this decision, along with the responsibility to pay for the reasonable costs of disposing of your remains, will be made by these individuals in this order:

Spouse  
Child or children  
Parent or parents

The next of kin  
An administrator appointed by a court

### **What types of instructions should I consider?**

What you decide to include is a personal matter. Typical issues covered are:

- The name of the mortuary or other institution that will handle the burial or cremation.
- Whether or not you wish to be embalmed.
- The type of casket or container in which your remains will be buried or cremated.
- The details of any ceremony you want before the burial or cremation.
- Who will serve as your pallbearers if you wish to have any.
- How your remains will be transported to the cemetery and gravesite.
- Where your remains will be buried, stored, or scattered.
- The details of any ceremony you want to accompany your burial, interment, or scattering.
- The details of any marker you want to show where your remains are buried or interred.
- Whether you wish to be buried or cremated.

Use *FUNERAL PREFERENCES* in our [PEACE OF MIND PLAN](#) to record your own funeral instructions and preferences.

### **LEARN MORE**

- USAA Education Foundation's [Funeral Planning](#) covers: Funeral Planning, Important Personal Information, The Death Certificate, Disposition Of Remains, Funeral Home Services. Download [Planning a Funeral](#) (PDF).
- The Retired Officers Association ([TROA](#)) publishes [TAPs. A Guide to Military Oriented Burials](#) has sections on People Entitled to Interment; Arlington National Cemetery; State Cemeteries; Overseas Cemeteries; Burial at Sea; Death Abroad; Anatomical Gifts; VA National Cemeteries; Post Cemeteries; State Veterans Cemeteries
- To find a funeral or memorial society near you, look in the Yellow Pages of your telephone book under Funeral Information and Advisory Services, or contact the Funeral and Memorial Societies of America, 1-800-458-5563, or visit the [Funeral Consumer Alliance](#) Web site. <http://www.funerals.org/>.
- Use the [Funeral Consumer Alliance](#) Web site for [Consumer Alerts](#) or other information on funerals. Also see [Affordable Options, A Guide to Funeral Planning](#) & [Prepaying Your Funeral – Benefits & Dangers](#)
- AARP's [Funeral & Burial Costs](#)
- [National Funeral Directors Association](#)
- About.com's [Funerals can be expensive, but you can plan for them, in a financial sense, beforehand.](#)
- Nolo's [Funeral Planning & Other Final Arrangements](#), [Final Arrangements FAQ](#).
- Kiplinger.com's [Unusual Goodbyes](#) (October 2001)
- [Funerals Pre Pay 5-01 \(Consumer Reports\)](#)

Read more in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.

## CHAPTER 11: PROBATE

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### INTRODUCTION

After you die your estate is settled through **probate**, a court-supervised procedure for enforcing your *Last Will & Testament*, or if you die without a will, to distribute any property in your probate estate. Probate:

- determines a responsible person to oversee your estate;
- ensures your estate is distributed according to your will or by law; and
- provides a method for paying your creditors.

### FREQUENTLY ASKED QUESTIONS

#### **How does the probate process work?**

Your assets are collected and applied to pay debts, taxes, and the expenses of estate administration. The remaining assets are then distributed to beneficiaries. Probate assets include those owned in your name and that are not transferred to another at death by contract or operation of law. Non-probate assets include life insurance payable to another, pensions and IRAs payable to another, accounts payable on death to another and any property owned with another with survivorship rights. Depending on your state's laws, property owned by spouses as community property may or may not be subject to probate. Even if an asset is not subject to probate it still may be taxable under estate tax law (see [FEDERAL ESTATE TAXES](#) for more information).

#### **What happens in probate?**

Legal title of property you own individually transfers to your beneficiaries. If you die with a will, the probate process will establish the validity of your will under state law and distribute your property covered by your will in accordance with its terms and conditions. In some states (for example, California, Colorado, Florida, Georgia, Texas, Virginia, Washington) the probate process is streamlined for estates under certain dollar limits.

On the other hand, if you die without a will ("intestate"), the probate court appoints an administrator to receive claims against your estate, pay creditors, and distribute all remaining property in accordance with the laws of the state. Because you have no will, your property must go through "probate" for legal title to transfer to your heirs at law. The law of the state of your legal residence defines your heirs at law. In most cases, there is a presumption that your property will pass to your spouse and children. For example, under one Texas [Descent & Distribution](#) law, your spouse would receive one-third, and your child(ren) would share the remaining two-thirds of property in your probate estate when you die.

#### **How does probate start?**

If you died with a will, probate usually begins by your executor filing a petition to administer your will. An executor is the person you named in your will. The executor's job is to protect your property until all the debts and taxes have been paid and then ensure the remaining property is transferred to your beneficiaries. An executor has a special duty to act with the highest degree of honesty, impartiality, and diligence.

### **How may I find my state's probate information?**

Use Cornell Legal Information Institute's collection of state [probate](#) law links to find probate laws for your legal residence. Many probate courts are part of county governments. Many counties have their own web sites and include probate court information. The common Web site address for a county is: <http://www.co.countyname.state.us>. For example, <http://www.co.fairfax.va.us/courts/circuit/Estates.htm> is the web address for Fairfax County, Virginia probate information. These sites often include common probate questions and answers.

### **What are the duties of my executor or administrator?**

An executor you nominate in your will can accept or decline to serve. Consequently, you should name a primary and an alternate in your will. If either person you name is unavailable or cannot serve, the court will appoint an administrator. Executors/administrators have many responsibilities, often including:

- Deciding whether or not probate proceedings are necessary. If your property is worth less than a certain amount, state law may permit a streamlined or less formal probate process.
- Identifying and locating beneficiaries who inherit your property.
- Determining whether it is legally permissible to transfer certain items immediately to the people named to inherit them even if probate is required for other property.
- Filing the will and all required legal papers in the local probate court.
- Locating your assets and managing them during probate.
- Handling day-to-day details, such as ending leases, canceling credit cards, and notifying banks and government agencies, such as Social Security, the Department of Veterans Affairs, military retired pay office, and Medicare, of the death.
- Setting up an estate bank account to hold money that is owed to you; for example, paychecks and stock dividends.
- Using estate funds to pay continuing expenses; for example, mortgage payments, utility bills, and insurance premiums.
- Paying debts. The executor must officially notify creditors of the probate.
- Paying taxes. A final income tax return must be filed covering the beginning of the tax year to the date of your death. Both a federal and state income tax return may be required. Federal and state estate tax returns may also be required depending on how much property you owned at death and to whom you left the property.
- Supervising the distribution of the decedent's property to the people or organizations named in the will.

### **Are there any restrictions on who can serve as an executor or administrator?**

Yes, some states limit who can act as your executor or administrator. Usually you cannot name a minor or convicted felon as your executor. Some states do not permit a person who lives in another state to serve unless that person is a relative. Still other states (for example, Maryland, Michigan, North Carolina, Oklahoma, Texas, Washington) allow a non-resident to qualify provided a resident is appointed to accept service of process. Some states require a nonresident executor obtain a bond. A bond is an insurance policy that protects the beneficiaries in case the executor wrongfully



uses the estate's property. State law may also require an in-state resident to act as your executor's representative.

## LEARN MORE

- American Bar Association Section on Real Property, Probate & Trust Law [Estate Planning Questions & Answers](#), including probate.
- Free Advice.com's [Probate](#)
- Nolo's [Probate & Executors](#)
- Cornell Legal Information Institute's collection of state [probate law](#) links
- [Kiplinger.com's So You've Agreed to Be an Executor](#) (September 2001)
- Internal Revenue Service Publication [559](#), *Survivors, Executors, and Administrators* (PDF, requires Adobe Acrobat Reader)

Read more in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.

## CHAPTER 12: LONG-TERM CARE & INSURANCE

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### INTRODUCTION

More and more military members and retirees are seeking information on long-term care and long-term care insurance as part of their estate plan, or as they think about caring for their aging parents. Health care problems can greatly change your life. A loss of mobility or the ability to do simple activities of daily life (for example, dressing, bathing, eating) means a loss of control and independence. In the last few years, more people have seen how easily long-term care costs can use up a life savings. It is a good idea to think about long-term care as part of your estate plan. This chapter briefly introduces long-term care and possible ways to pay for it.

### FREQUENTLY ASKED QUESTIONS

#### **What is long-term care?**

Long-term care is health care to help you if you have a disabling or chronic illness and cannot care for yourself. It differs from traditional hospital medical care in that it may not improve or correct a medical problem, but it will help you adjust to your condition.

#### **What are the types of long-term care?**

There are several types of long-term care arrangements. The main differences are in the type of medical services needed, the type of supervision needed, and the location where the services are provided.

- *Home health care:* This usually includes medical services by professionals, such as nurses, therapists, home care aides, and social workers. Home health care is available from non-profit and private for-profit home health care agencies and public health departments. Trained personnel help with activities of daily living, such as bathing, dressing, or eating. They may also help prepare meals, run errands, and do light housekeeping.
- *Respite care:* This provides a break for family members who are the primary caregivers for the disabled person at home. Respite care can vary from a few hours a day to several days or weeks. A respite caregiver usually comes to the home and may be a volunteer.
- *Adult day care:* This is usually at a center that provides both health care and social services for people who cannot be left alone during the day. Often hospitals, local governments, or non-profit agencies operate centers that offer some basic health services and social and recreational opportunities.
- *Hospice care:* This helps the terminally ill and their families cope with physical, emotional, and spiritual aspects of dying. Care may be provided in a hospice facility or in the person's home.
- *Assisted living care:* This is a combination of housing, personalized support services, and health care designed to meet the individual needs of people who require some help with daily activities but not the skilled care of a nursing home. This care is ideal for someone who is too frail to live alone but does not need to be in a nursing home. Assisted living facilities may be independent facilities, combined with skilled nursing facilities, or part of a continuing care retirement community. Most costs are paid by the resident and family members. There are some long-term

care insurance policies that offer assisted living coverage. In some states Medicaid pays for some of these services.

- *Nursing home care*: This is for people with chronic or disabling illnesses who cannot care for themselves but who do not need hospital care. Nursing homes offer up to three levels of care—skilled nursing care, personal care, and professional care.
- *Continuing Care Retirement Communities (CCRCs)*: CCRCs combine independent housing units or apartments with living facilities and nursing home care, usually all at the same location. Costs vary. Many CCRCs charge substantial up-front entry fees that may be partially or fully refundable. Then there are monthly charges depending on the type of service required.

### **How do I pay for long-term care?**

Costs vary depending on the amount and type of care and location where care is provided. You may use one or more of these ways to pay for long-term care.

- **Personal funds**: your own personal resources, such as personal current income, savings, or investments.
- **Contributions from family members**: If you do not plan ahead for long-term care or do not have sufficient personal resources, you may have to rely on your family members to pay for or to deliver care. This can be burdensome on your family if family members do not have the financial resources to pay for care or the necessary skills or time to provide the proper care.
- **Medicare**: Medicare covers very little of the long-term costs that most people need. Medicare will pay for up to 100 days of care in a skilled nursing facility after you have been hospitalized for at least three days. Medicare covers the first twenty days entirely. The patient pays a daily coinsurance after the twentieth day until day 100. After day 100, Medicare covers none of the costs. Medicare does not pay for custodial care.
- **Medicaid**: Medicaid is a joint federal and state program that pays for health care for people with limited income and resources. It does pay for custodial nursing home care. Each state sets its own standards for Medicaid eligibility, determines the type of services provided, and administers the program under federal guidelines. These rules are complex and vary from state to state.
- **Department of Veterans Affairs (VA) health benefits**: Many larger VA hospitals offer long-term care services. Contact the nearest VA hospital to determine eligibility for the services the hospital offers.
- **Long-term care insurance**: This is private insurance for which you pay designed to cover long-term costs. Depending on the policy, long-term care insurance may cover nursing home stays, home health care, adult day care, assisted-living facility care, and respite care.

### **Do I need long-term care insurance?**

Maybe, depending on your health, age, and financial situation, among other factors. It is a personal decision similar to whether you need life insurance. If you need long-term care and have other funding sources then you may not need long-term care insurance.

### **What should I look for in a long-term care insurance policy?**

Consider these issues when evaluating a long-term care insurance policy:

- *Services covered:* Many policies cover only long-term nursing home care. You should make sure your policy also covers other types of care desired (for example, home care, adult day care).
- *Amount of benefit:* What will the policy pay for each type of care? The policy may allow a fixed dollar amount for each type of service, regardless of the actual cost of the service. Paying a higher premium may buy a policy that will pay more for the service. Find out if the policy pays a different amount depending on the type of care provided. For example, is the payment for a day of nursing home care different from the payment for a day of home care? You may have more flexibility in planning later on if the policy makes the same payment for the different services. Find out about the policy's deductibles, co-payments, and waiting periods. Generally the higher the deductible, the lower the premium. Also, most policies have a waiting period of 30 to 90 days during which time you have to pay for services from your own funds. Find out how long the policy pays benefits. Many long-term care policies only pay benefits for a fixed period of time rather than indefinitely. After the time period runs, you will have to rely on your own funds or other sources to pay for the services.
- *Payment of benefits:* Find out the requirements to start coverage under the policy. Some insurance companies accept a covered person's doctor's statements while others require certification from the company's medical staff. Find out if there are restrictions on illnesses covered or transfers to a nursing home not following a hospital stay. What triggers benefit payments?
- *Forfeiture provisions:* Find out if the policy has any forfeiture provisions. Such a provision may permit you to recover some of the accrued value of the policy if you can no longer afford to pay the premiums. This could mean you might be able to keep the policy with reduced benefits, convert it into term life insurance, or borrow against or receive the cash value of the policy if it has any cash value.
- *Inflation protection:* Usually the cost of long-term care rises over time. Most policies offer inflation protection for those increases for an additional charge. Find out how much an inflation protection rider costs and if it is automatically renewed yearly.

### **How can I compare long-term care insurance policies?**

Read the fine print. One way to compare is to use a [long-term care policy checklist](#) as you review each policy.

### **Is there a federal employee long-term care insurance program?**

Yes, beginning in 2002, military members may be eligible for the [Federal Long-Term Care Insurance Program](#) that the Office of Personnel Management administers. This program is intended to help provide insurance coverage for nursing home care, assisted-living care, adult day care, home health care, and other long-term care.

## LEARN MORE

- [Nolo.com](#)'s [The First Big Step: Discussing the Need for Long-Term Care](#)
- From the [National Aging Information Center](#) [Long-Term Care Poses Problems for Future Generations](#).
- From the Department of Defense (DoD) [Taking Care of Elderly Family Members](#) course, [DoD Caregiver's Guide](#) online "aimed at informing adult caregivers about resources and options for responding to the needs of older relatives."
- From Prudential, a [long-term care learning center](#). Download free educational brochures geared toward women, adult children who care for their parents, and those who want to learn more about the costs of private insurance.
- [Caring for an Aging Parent](#) is a free online course on coping with care for aging parents – offers to "prepare you for taking care of an aging parent or loved one and will provide people and resources to support you." Includes: [Know when to step in to help](#); [Essential information on care resources](#); & [Where can I find money for care?](#) Has a comparison chart of different funding sources.
- [Long-Term Care Insurance: Protection for Your Future](#) (PDF, requires Adobe Acrobat Reader) From the [American Council of Life Insurers](#) (ACIL). This 22-page guide answers common questions about long-term care insurance. It provides tips and a checklist for selecting a policy. Long-term care insurance can protect a lifetime of retirement savings from being wiped out by an unexpected need for nursing home, assisted living, or at-home care. Also from ACIL, [What Long-Term Care Insurance Can Do For You](#) and [Tips on Buying Long-Term Care Insurance](#).
- The [Office of Personnel Management](#) has information on the [Federal Long-Term Care Insurance Program](#) including [premiums](#) and [frequently asked questions](#) online that began in 2002. The federal insurance carriers, LTC Partners, have an Internet site (<http://www.ltcfeds.com>) and a toll-free number (1-800-582-3337) for additional information.
- The Health Insurance Association of America Consumer Information Guide section offers [Guide to Long-Term Healthcare](#), online information on long-term care insurance including a [long-term care policy checklist](#) to use when evaluating long-term care insurance policies.
- [USAA Education Foundation](#)'s [Insurance](#) section offers [Long-Term Care](#) (PDF).
- From [Insure.com](#): [The basics of long-term care insurance](#) offers the "boondoggles and benefits of this coverage some baby boomers may not need and other can't live without." Also see: [The Basics of Long Term Disability Insurance](#); [The Basics of Short Term Disability Insurance](#); & [A Disability Insurance Glossary](#).
- From [ElderWeb](#): a long-term care [Glossary](#), & [How Much Do Nursing Homes Charge](#).
- [CareView](#) - Search for a nursing home or assisted living.
- From [FedWeek](#), [Long Term Care Insurance](#).
- New York State Insurance Department [Long Term Care Services](#).
- [Compare Nursing Home Care](#).



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## CHAPTER 13: FEDERAL ESTATE TAXES

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### INTRODUCTION

The property you own when you die ("**your estate**") may be subject to federal estate taxes – part of a federal **unified transfer tax system** on estate, gift, and generation-skipping transfers. The federal estate tax is based on all property transferred at death, and the gift tax is based on all property you give away during life. A generation-skipping transfer tax is designed to ensure that property passing by skipping a generation is taxed.

Estate **tax** planning may help you minimize estate tax. For example, you could establish a plan using your will and/or a trust, or give gifts during your lifetime. This chapter briefly explains the federal estate tax.

### DETERMINING THE FEDERAL ESTATE TAX

The federal estate tax applies to property transferred at death. This illustrates how it is calculated:

Gross estate	
<u>Less: administration expenses, losses, debts</u>	= Adjusted gross estate
<u>Less: marital, charitable deductions</u>	= Taxable estate
Apply rate schedule to taxable estate = tentative tax	
<u>Less: credit against tentative tax</u>	= <b>Federal estate tax due</b>

The federal tax system **exempts** a certain amount from a transfer tax. In 2002, the first \$1,000,000 of your taxable estate is exempt. (Technically, the law provides for this by allowing a credit of \$345,800, which is the amount of tax on the first \$1,000,000 of a taxable estate.) Your spouse is also entitled to a \$1,000,000 exemption. The exemption changes as shown below.

Amount Exempt from Federal Estate & Generation Skipping Transfer Taxes

Year Of Death	Exempt Amount
2002-2003	\$1,000,000
2004-2005	\$1,500,000
2006-2008	\$2,000,000
2009	\$3,500,000
2010	Repealed*
2011	\$1,000,000

\*The estate and generation skipping transfer taxes are phased completely out in 2010. Unless Congress acts, however, the tax returns in 2011 with amounts above \$1,000,000 subject to transfer taxes.

## THE GROSS ESTATE

Under federal estate tax laws, the gross estate of a decedent who is a U.S. citizen or resident includes the value of all property in which the decedent had an interest at his or her death. Some of the most commonly included types of property are:

- a. Property owned by the decedent at death.
- b. Life insurance proceeds if the decedent retained any incident of ownership in the policy or if the policy was payable to or for the benefit of the decedent's estate.
- c. An annuity or other payment to the extent that the payment is attributable to amounts the decedent paid.
- d. Property transferred to another but over which the decedent retained some control.
- e. Property subject to a general power of appointment if the decedent held that power at death.
- f. The entire value of property owned jointly with the right of survivorship except for the part that the surviving joint tenant contributed to the acquisition of the property. If the joint owner is the spouse of the decedent, one-half of the property is included in the gross estate of the first spouse to die regardless of what contribution was made by the other spouse.
- g. Property transferred within three years of death.

### **Gift Tax**

The federal gift tax applies to property transfers made during lifetime. The amount of this tax also depends on the value of the property transferred. Each person may transfer gift tax-free a certain amount. In 2002, the amount is \$11,000 (or \$22,000 if "split" gifting is elected by husband and wife). See the gift tax rate schedule for 2002-2011: <http://www.taxplanet.com/prez/ptestate-giftch/ptestate-giftch.html>.

## SUMMARY

There is no gift tax and no estate tax on the first \$1,000,000 of combined transfers during life or at death, for gifts made and individuals dying in 2002 or 2003. If, however, you own a home, some life insurance (including Servicemen's Group Life Insurance), and are entitled to retirement plan benefits, your gross estate may already exceed the estate tax liability threshold (in 2002, \$1,000,000).

If the value of all assets you and your spouse own exceeds the exemption amount, an estate plan that passes everything to your surviving spouse will result in estate tax liability at the death of the second spouse. This reduces the amount available for your children or other beneficiaries. You and your spouse can avoid estate tax on assets up to twice the exemption amount (\$2,000,000 in 2002 or 2003, more in later years) if your wills are drafted to take advantage of each spouse's own credit. For example, your wills could provide that, when the first spouse dies, the amount protected from estate tax by the available credit passes to a trust (a "credit shelter trust") benefiting your surviving spouse during his or her life without adding to the surviving spouse's estate at death.

Married couples should make sure that each spouse has sufficient assets in his or her own name to take advantage of the increased exemption. In addition, your wills should establish a bypass or credit-shelter trust (read our [USING TRUSTS IN ESTATE PLANNING](#)



Chapter). Such a trust is funded with an amount equal to the exemption from estate tax (\$1,000,000 in 2002). The survivor receives income from the trust and the trust assets pass to the children free of estate tax on the survivor's death. Assets above the exempt amount can be given outright to the surviving spouse or placed in a special marital trust for him or her. This approach may have to be altered depending on the year involved and the size of the estates.

Consult a legal assistance attorney for more information about federal estate taxes and how the rate and credit affect your estate. Remember, estate **tax** planning differs from estate planning. Even if you do not have estate tax concerns, you may need an estate plan. You should write a will and develop an estate plans to ensure your assets will pass as you desire and that special needs of particular heirs are properly addressed. This is so even if there is a good chance of survival until a year when estate tax won't be owed because of the increasing exemption or repeal.

### LEARN MORE

- IRS Publication 950, Introduction to Estate & Gift Taxes, on the IRS web site: <http://www.irs.gov/pub/irs-pdf/p950.pdf> (in PDF format; requires Adobe Acrobat Reader).
- Cornell's Legal Information Institute: Estate & Gift Taxes [http://www.law.cornell.edu/topics/estate\\_gift\\_tax.html](http://www.law.cornell.edu/topics/estate_gift_tax.html)
- TaxPlanet.com's Estate Tax <http://www.taxplanet.com/prez/ptestate/ptestate.html>.
- SmartMoney.com's [\*Will You Owe Estate Taxes\*](#). It includes an "*Estate Tax Exposure Meter*" to help you calculate whether your estate will owe estate tax.

## CHAPTER 14: STATE ESTATE/INHERITANCE TAXES

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### INTRODUCTION

In addition to the federal estate tax that may apply when you die, there may be a state death tax. Every state has an estate or inheritance tax, and a few states impose a gift tax. These state death transfer taxes could affect your estate planning. This chapter briefly introduces state transfer taxes related to estate planning.

### FREQUENTLY ASKED QUESTIONS

#### **How do state death taxes work?**

Some states charge a state estate tax similar to the federal one, and some impose an inheritance tax. For convenience, these general terms apply:

**Death** tax—describes taxes imposed on property or on the transfer of property at the death of the owner. It includes estate and inheritance taxes.

**Estate** tax—a tax imposed on the right to transfer property at death. Your estate will pay any state estate tax.

**Inheritance** tax—a tax imposed on your beneficiaries – the persons inheriting your property. This tax is on the right to receive the property through a transfer by legacy, devise, or intestate succession.

**Gift** tax—a tax on gifts made above a certain amount.

#### **Which state death tax applies?**

State law determines what is taxed and the rate. Usually, the tax rate of the state you live in applies for intangible personal property, wherever located, and the rate of the state where real estate and tangible personal property are located applies to those.

#### **Will my beneficiary pay any tax?**

If your state has an inheritance tax then your beneficiaries will pay it if they receive money from your estate. Of course, they will have to pay income tax on any earnings after they invest the bequest.

Here are two examples of state death taxes:

**Texas:** Under Texas' "inheritance tax" laws, a tax equal to the amount of the federal credit applies on the transfer at death of the property of every resident. Property subject to tax includes real property in Texas; tangible personal property in Texas; and all intangible personal property wherever located. Real property held in a personal trust is not taxed if the real property is located outside of Texas. Property of a nonresident subject to tax includes real property in Texas and tangible personal property in Texas.

**Maryland:** Under Maryland law, there is both an inheritance and an estate tax. The inheritance tax applies on the privilege of receiving property that passes from a decedent and is in Maryland. Certain exceptions to the inheritance tax are listed, such as for property passed from a decedent to a parent, spouse, sibling, or child of

the decedent. The Maryland estate tax applies on the transfer of the Maryland estate of each decedent who was a resident of the state or a nonresident whose estate includes any interest in real or tangible personal property in Maryland. The Maryland estate tax is tied to the federal credit.

### **Will the changes in the federal estate tax change state laws?**

Maybe. Many states are reviewing their current death tax laws. With the rise in the federal exemption amount to \$1,000,000 (and more in later years – see [FEDERAL ESTATE TAXES](#)), states that tie their death taxes to the federal laws may lose revenues unless they change their death tax system.

If you have any questions about what system your state death taxes consult a legal assistance attorney.

### **LEARN MORE**

- One way to locate your state's estate and inheritance tax laws is to use [TaxPlanet.com](#)'s [state](#) links. After you are on your state's tax site search for estate or inheritance tax to find the tax rates.
- The State Tax Research Page: <http://strp.tripod.com>.

Read more in our Estate Planning Information Center on our [Legal Services](#) site or check other Internet sites listed in our [ESTATE PLANNING INTERNET RESOURCES](#) appendix.

## CHAPTER 15: PUTTING IT ALL TOGETHER

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Congratulations. Now, you have a good idea about some useful estate planning techniques and their importance to you and your family. So, what do you do next? Answer these questions to focus on your estate planning needs:

Yes	No	
		<b>Do you have a Last Will &amp; Testament?</b> <ul style="list-style-type: none"> <li>If not, a court will appoint a guardian for your minor children, costing time, perhaps money, and possibly needless aggravation for your family.</li> <li>Your Last Will &amp; Testament does not help if you become incapacitated and unable to handle your own affairs – older persons may desire to use a Living Trust.</li> </ul>
		<b>If you have minor children, did you nominate a guardian in your will if both you and your spouse die before the children become adults?</b> <ul style="list-style-type: none"> <li>Failure to nominate a guardian just in case means that a Probate Court will decide who raises your children.</li> </ul>
		<b>Do you own most of your property/assets jointly with your spouse?</b> <ul style="list-style-type: none"> <li>If you are married, federal estate tax law allows you an unlimited marital deduction for property you leave to your surviving U.S. citizen spouse. Joint tenancy with right of survivorship property qualifies for that unlimited marital deduction; however, it does not use each spouse's \$1,000,000 estate tax exclusion.</li> <li>If you own property jointly with someone other than your spouse, you may have trouble if your joint owner gets divorced, does not pay some income taxes, has creditor problems, or is sued. The other party may want to put a lien on your house, bank account, or whatever else you own jointly.</li> </ul>
		<b>If you have a Last Will &amp; Testament, does it leave everything to your spouse?</b> <ul style="list-style-type: none"> <li>A "Honey, I love you" Will, leaving everything to your spouse, can be just as bad for the same reasons as joint tenancy ownership can: you could <b>waste</b> your \$1,000,000 federal estate tax exclusion.</li> </ul>
		<b>Did you leave your estate to your children in equal shares?</b> <ul style="list-style-type: none"> <li>Most parents want to treat their children equally. They divide their estate equally: one share for each child. What if one of them needs an expensive operation? If you were living you would try to find the money no matter what you had to do – mortgage the house, sell the second car, etc., to pay for the operation. Dividing your estate in equal shares might not work out as you and your spouse desire. Consider a contingent trust for the minor children.</li> </ul>
		<b>Are you comfortable with your choices for your executor(s) and trustee(s)?</b> <ul style="list-style-type: none"> <li>If not, discuss your choices with your attorney. Maybe you need to pick someone else.</li> </ul>
		<b>Do you have enough life insurance?</b> <ul style="list-style-type: none"> <li>Depending on your financial security goals and needs, you may decide to purchase commercial life insurance coverage above SGLI.</li> </ul>
		<b>If you have life insurance, do you own it yourself?</b> <ul style="list-style-type: none"> <li>Owning your life insurance policy means the policy's entire death benefit is part of your gross estate for Federal estate tax purposes. Depending on the size of your estate (especially if close to, or over \$1,000,000), it might be smart for someone else to own the policy. You might consider an Insurance Trust.</li> <li>SGLI will be in your estate for federal estate tax purposes if you are covered when you die. You cannot transfer ownership of SGLI.</li> </ul>
		<b>Do you have a Durable Power of Attorney in case of your incapacity?</b> <ul style="list-style-type: none"> <li>A durable Power of Attorney is a good idea – if it will be accepted when presented. Check with businesses where your agent will use it to be sure they will honor it.</li> </ul>
		<b>Did you prepare an Advance Medical Directive appointing an agent to make health care decisions?</b> <ul style="list-style-type: none"> <li>Many military make both an advance medical directive or <i>Living Will</i> (a document that describes how much (or how little) medical care you want to prolong your life if you are terminally ill), and a Health Care Power of Attorney naming someone to make medical decisions if they are unable to do so.</li> </ul>
		<b>Are you satisfied you have taken advantage of all tax saving opportunities?</b> <ul style="list-style-type: none"> <li>If not, you should consult your tax advisor.</li> </ul>
		<b>Are you satisfied your estate plan is complete, up-to-date, and will accomplish your goals?</b> <ul style="list-style-type: none"> <li>If not, obtain professional advice as soon as possible.</li> </ul>

How did you do? What you do next is your choice, of course. Most likely, however, you (and your family) will benefit by reviewing our [ESTATE PLANNING QUESTIONNAIRE](#) and discussing your goals and objectives with your spouse. Then complete the questionnaire. Your spouse should complete one too (if he or she desire an estate plan).

Contact an attorney to schedule an estate planning appointment. Take your completed questionnaire and any real estate deeds or other important papers with you to the attorney.

**Remember:** If you have loved ones, you need an estate plan. That is true whether you are young or old, rich or poor. Plan for disposition of your life's accumulations and for the protection of your survivors. Estate planning helps put your plan in place.

## **APPENDIX A: ESTATE PLANNING QUESTIONNAIRE**

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The Estate Planning Questionnaire is distributed separately. Download a copy from [Legal Services](#) in the Estate Planning Information Center.

## **APPENDIX B: MY PEACE OF MIND PLAN**

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The Peace of Mind Plan is distributed separately. Download a copy from [Legal Services](#) in the Estate Planning Information Center.

## APPENDIX C: HOW MUCH DO I NEED?

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### INTRODUCTION

If you die on active duty, a Casualty Assistance Officer will help your survivor(s) understand and apply for Government survivor benefits (discussed in [SURVIVOR BENEFITS](#)). You should be familiar with these as an important first step in your estate and financial security planning. Knowing how much Government financial support will be provided when you die helps you more accurately plan toward your financial security goal for your survivor(s).

One easy, simple way to calculate survivor needs is to estimate the monthly income you want for your survivors. You should include known and anticipated expenses. Then compare that amount to known and anticipated financial resources, and determine the difference, or shortfall to make up. Next, decide how to meet that amount. This is similar to retirement financial planning. [Choose to Save.org](#) offers several online [financial tools](#) to help you estimate your retirement needs and make financial plans. One very useful tool is the [American Savings Education Council's Ballpark Estimate](#), a simple worksheet that helps you quickly identify about how much to save to fund a comfortable retirement. You can adapt that approach to your survivor financial security planning. You may find it helpful to review those online resources as you work through this example and worksheet.

One important difference between retirement financial planning and survivor benefit planning is that you will be around to enjoy the retirement. This generally requires you save and invest to supplement your retirement pension. Survivor benefit planning, however, is for your survivors. Many military members use term life insurance to supplement Government financial survivor benefits.

The following example illustrates how to determine survivor benefits and any shortfall.

### EXAMPLE

Remember SSG Ray and Debra? You know Ray; everybody knows Ray. SSG Ray is 30 years old. Debra, his wife, is 27. Jack, age 6, and Jill, age 8, are their children. As a SSG with over 12 years of military service, his pre-tax basic pay is \$2,417 a month (or almost \$30,000 a year) (from 2002 [military pay chart](#)). His monthly housing allowance is almost \$620, raising his monthly income over \$3,000. If SSG Ray died on active duty in May 2002, Debra and the children would receive certain financial benefits:

- **Dependency & Indemnity Compensation (DIC):**

Debra would receive DIC as long as she does not remarry. In addition, the children's DIC would be \$234 per month for each child under 18. (Note: If Debra receives SBP, that monthly payment is reduced by the DIC amount she receives.)

Dependency & Indemnity Payments Monthly	Years after death		
	0 - 8	8-10	10+
Debra	\$935	\$935	\$935
Jack (age 6)	234	234	0
Jill (age 8)	234	?	0
<b>Total DIC to the family</b>	<b>\$1,403</b>	<b>*</b>	<b>\$935</b>



\*After Jack and Jill reach 18 (10 and 8 years, respectively after SSG Ray's death), the DIC-Child payment stops. If they attend college, they could receive a monthly DIC payment (while 18-22 and in college).

- **Social Security:**

Using the Social Security Administration's online [quick calculator](#) for a “rough” estimate, SSG Ray’s estimated social security survivor benefit amounts are:

Social Security Monthly Payments	Years after death	
	0-8	8-10
Debra while caring for child	\$812	\$812
Jack (until 18)	812	\$812
Jill (until 18)	812	
<b>Family maximum</b>	<b>\$2,025.60</b>	
Payment for Debra & Jack under 16 (after Jill reached 16)	<b>\$1624</b>	
Debra at 62 - retirement age	<b>\$1,083</b>	

Since Debra is caring for SSG Ray's two young children in 2002, SSA would pay her \$812 per month. This continues until Jack, the youngest child, turns 16 in ten years, and then the Social Security payment to Debra stops. Jack and Jill each would receive \$812 per month until turning 18. When added together, however, these three payments exceed the **family maximum**, so the total SS payment is \$2,025.60 in 2002.

- **Total DIC and SSA payments each month for the first 8 years after SSG Ray's death:**

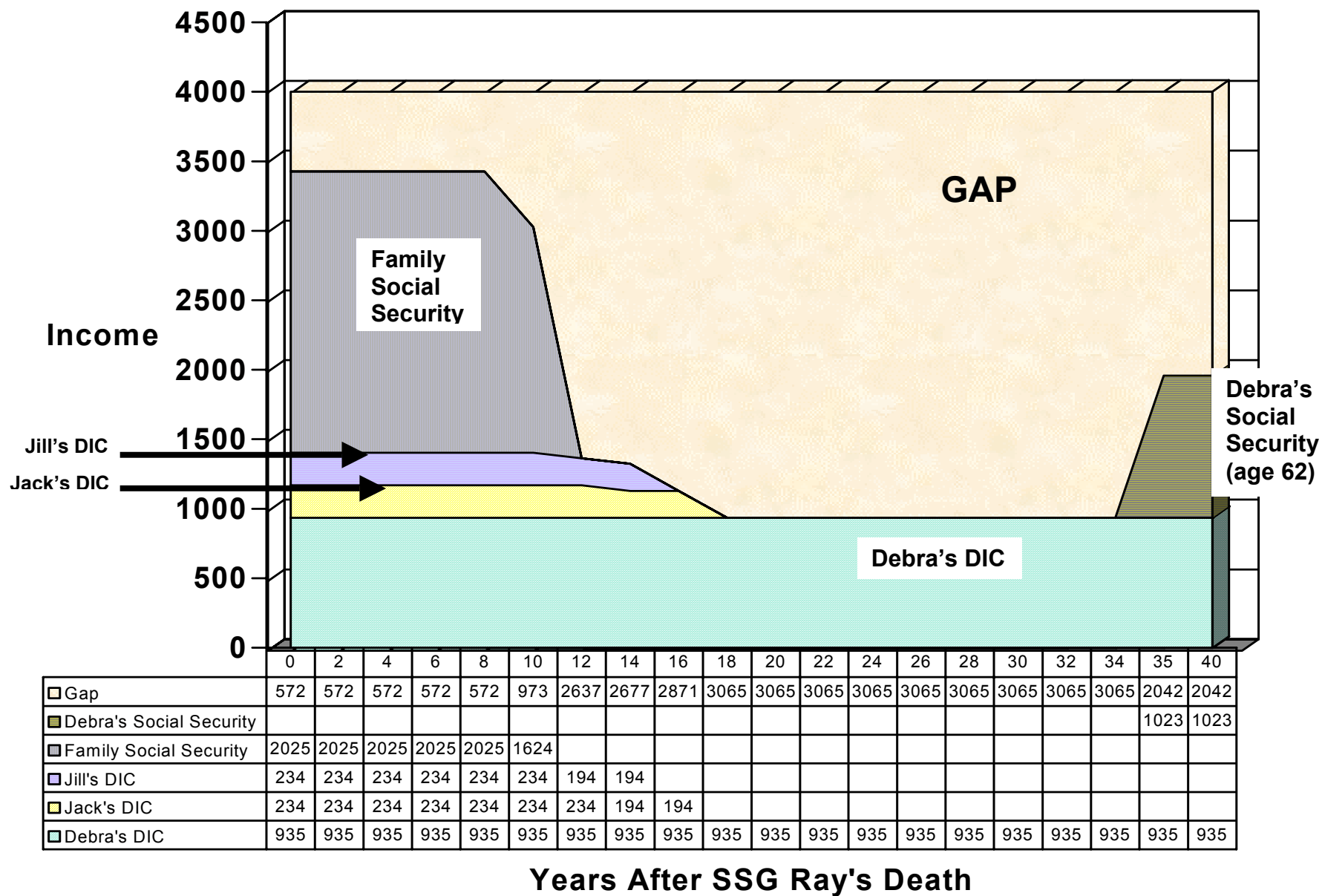
DIC	\$935
Jack (age 6)	234
Jill (age 8)	234
Total DIC to the family	\$1,403
Family Social Security	\$2,025
<b>TOTAL</b>	<b>\$3,428</b>

Remember this total will be lower when the children reach 16, and 18.

SSG Ray and Debra have discussed this projection. They are both concerned that the \$3,428 might not be enough for Debra and the children to live comfortably, especially if inflation increases, or they incur higher living expenses. They also are wondering about college for the children. After reflection, they think that they should target a monthly income from all sources of \$4,000 for the survivors. (The \$4,000 is a guess. It is also a round number and easy to use in calculations. You might decide on a larger or smaller amount; however, the same principles apply. Once you have a "target" number,

compare it with the Government benefits to determine any shortfall for your financial planning.)

On the next page is a chart illustrating the DIC and Social Security payments in the years after SSG Ray's death. For illustration purposes, a constant financial goal of \$4,000 per month is presumed. After the children reach 18 and move out of the household, Debra may not need \$4,000 per month to live comfortably. In addition, in this example, Debra is not earning any income. At some point after SSG Ray's death, it is very likely Debra would be employed and her earnings would reduce the gap.



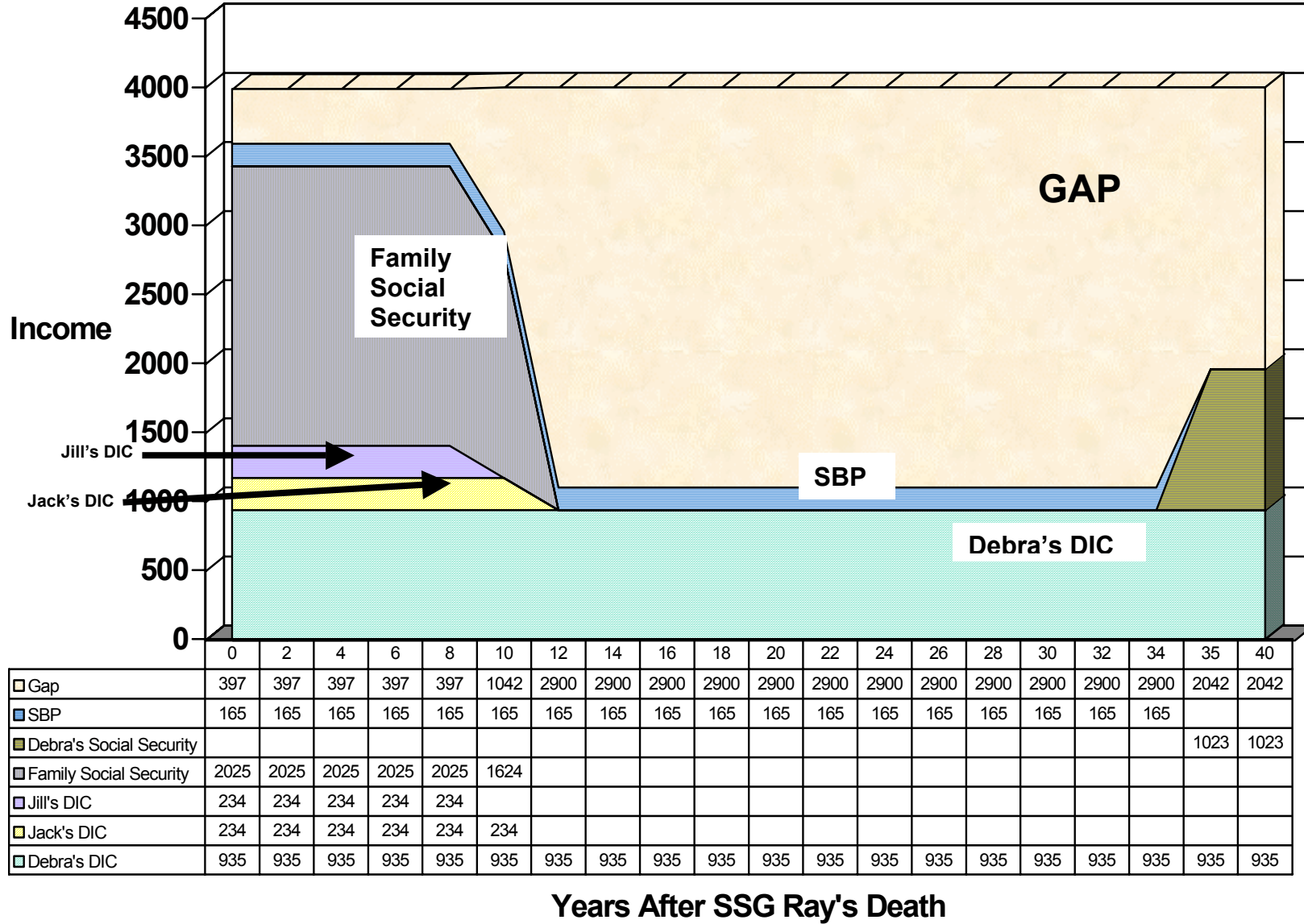
If \$4,000 is the target (or desired) monthly income level, SSG Ray's family would need to "find" almost \$600 per month or (about \$7,200 annually) to reach that level until the youngest child reaches 18. Thereafter, the gap widens as DIC for the children and Social Security benefits disappear.

In this simple example, one way to "find" the additional income is by using life insurance to fund an investment. For example, \$300,000 invested at a constant 4% interest would earn \$12,000 per year without using the invested amount. SSG Ray probably has \$250,000 SGLI so if it were invested at 4% that investment should yield about \$10,000 (pre-tax) to help "fill the gap". He might be contributing to Individual Retirement Arrangements or participating in the military Thrift Savings Plan. Both offer practical advantages over his life. Both also take time to build up to the desired level. See [LIFE INSURANCE IN ESTATE PLANNING](#) for more information. Several web sites (for example, [Insure.com](#), [QuoteSmith.com](#), [AccuQuote.com](#)) offer "Instant Quotes." SSG Ray could probably find a \$150,000 term policy for about \$150 per year (or \$12-13 per month). He could establish a trust to administer both life insurance proceeds.

**CAUTION:** In the example, the projected \$4,000 monthly income goal is pre-tax. Moreover, it does not cover major expenses such as college for the children, and presumes no use of the principal or invested amount.

The chart below shows how Survivor Benefit Plan (SBP) payments affect the "gap". For this example, assume that SSG Ray's SBP base amount is \$2,000. As discussed in the [SURVIVOR BENEFIT PLAN](#) chapter, the soldier determines the base amount. This ranges from a minimum \$300 to a maximum of the monthly retirement pay amount. After a recent change to the SBP law, soldiers who die on active duty before they reach twenty years of service *may* be eligible for SBP at a maximum equal to 75% of their monthly pay. Although the actual amount might be different, the example uses \$2,000. Debra could receive SBP payments of 55% of that or \$1,100 per month. SBP payments are lowered by DIC and again reduced later, when Debra starts receiving Social Security. (You may use the Internet links in the [SURVIVOR BENEFIT PLAN](#) Chapter to calculate SBP amounts.)

Note that about 12 years after SSG Ray's death, Debra is receiving SBP and DIC totaling \$1,065 per month. Unless she remarries, this would continue until she starts receiving Social Security at age 62.



**Debra's  
Social  
Security  
(age 62)**

Another approach is to use a worksheet like this one to estimate financial needs. To illustrate, here are SSG Ray's numbers (using the first chart above, assuming no SBP).

### SURVIVOR BALLPARK FINANCIAL NEEDS WORKSHEET

STEPS	Income	Need
<b>Step 1:</b> Estimated desired monthly or annual income for your survivors: Hint: your survivors may need about as much as you would plan for your retirement: 70 – 80% of your current income. Use monthly amounts		
		\$ 4,000
<b>Step 2:</b> Project amounts of survivor financial benefits (e.g., DIC, SS, SBP): Hint: these amounts will change if you have young children (under 16) and when your spouse reaches 65. In addition, your survivors may not receive all of these or the full amount. DIC: \$935 per month or \$11,220 per year SS: use the SSA online <a href="#">calculator</a> for a rough estimate SBP: enter the amount you expect to receive	(DIC-C)\$468 (DIC) \$935 (SS) \$2025	
<b>Step 3:</b> Total income:	\$3,428	
<b>Step 4:</b> Subtract Step 3 income amount from Need total:		- 3,428
<b>Step 5:</b> Shortfall to make up:		\$ 1,572
<b>Step 6:</b> Add financial assets: Hint: include total of value of all Investments/Securities (present market value), savings, real estate (present market value)	\$ _____	
<b>Step 7:</b> Income from life insurance invested: Hint: estimate the expected return on your life insurance proceeds as if your survivors invested it. For example, \$250,000 SGLI invested @ 5% would yield \$12,500 per year.	\$1,600	
<b>Step 8:</b> Add Step 6 & 7 amounts: Enter amount in both columns and subtract the total from the Step 7 amount.	\$1,600	1,600
<b>Step 9:</b> shortfall: This is a rough estimate of the amount you need to make up through additional financial resource planning.		\$ 0

Once you determine your “gap” (Step 5), use the American Savings Education Council's [How do I get there from here?](#) resource.

Here is a blank worksheet for your use.

## SURVIVOR BALLPARK FINANCIAL NEEDS WORKSHEET

<b>STEPS</b>	<b>Income</b>	<b>Need</b>
<p style="text-align: center;"><b>Step 1:</b> Estimated desired monthly or annual income for your survivors:</p> <p>Hint: your survivors may need about as much as you would plan for your retirement: 70 – 80% of your current income. Use monthly or annual (12 times the monthly) amounts consistently in throughout this worksheet</p>		\$ _____
<p style="text-align: center;"><b>Step 2:</b> Project amounts of survivor financial benefits (e.g., DIC, SS, SBP):</p> <p>Hint: these amounts will change if you have young children (under 16) and when your spouse reaches 65. In addition, your survivors may not receive all of these or the full amount.</p> <p>DIC: \$935 per month or \$11,220 per year</p> <p>SS: use the SSA online <a href="#">calculator</a> for a rough estimate</p> <p>SBP: enter the amount you expect to receive</p>	\$ _____	
<b>Step 3:</b> Total income:	\$ _____	
<b>Step 4:</b> Subtract Step 3 income amount from Need total:		\$ _____
<b>Step 5:</b> Shortfall to make up:		\$ _____
<p style="text-align: center;"><b>Step 6:</b> Add financial assets:</p> <p>Hint: include total of value of all Investments/Securities (present market value), savings, real estate (present market value)</p>	\$ _____	
<p style="text-align: center;"><b>Step 7:</b> Income from life insurance invested:</p> <p>Hint: estimate the expected return on your life insurance proceeds as if your survivors invested it. For example, \$250,000 SGLI invested @ 5% would yield \$12,500 per year.</p>	\$ _____	
<p style="text-align: center;"><b>Step 8:</b> Add Step 6 &amp; 7 amounts:</p> <p>Enter amount in both columns and subtract the total from the Step 7 amount.</p>	\$ _____	- _____
<p style="text-align: center;"><b>Step 9:</b> shortfall:</p> <p>This is a rough estimate of the amount you need to make up through additional financial resource planning.</p>		\$ _____

### SUMMARY

This chapter shows survivor financial benefits after the active duty member's death. It should give you an idea for your survivor's security and financial planning.



## APPENDIX D: MORE INFORMATION – ESTATE PLANNING INTERNET RESOURCES

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### INTRODUCTION

Using the Internet you may locate information and resources on many subjects, including the law. Here are a few useful sites to help you better understand estate planning. Of course, you may search the Internet for a particular term (for example, estate planning) or concept (for example, living trust) too.

**Hyperlinks are for convenience and information only, and are not an endorsement of the site, its content, or any products or services shown on such site. Remember,** information on the Internet may not be current. Be sure to check with appropriate, knowledgeable advisors to discuss your specific situation. Contact your legal assistance office if you have additional questions or desire more information. If you find a broken link, try backing from the right end of the URL left to the right-most forward slash (/) and deleting the portion of the URL to the right of that slash. For example in <http://www.jagcnet.army.mil/legal/xyz>, delete the “xyz” and try <http://www.jagcnet.army.mil/legal>. Repeat the process as necessary until you reach the main Web page. Try the Web site’s search function for the missing title. Report broken links to: <mailto:otjagla@hqda.army.mil>.

Our [Legal Services](#) Estate Planning Information Center is a useful starting point for current estate planning information for military members and their families.

### GENERAL ESTATE PLANNING SITES

- [Legal Services](#), review our Estate Planning Information Center.
- [USAA Education Foundation](#), has a general discussion of [estate planning](#): legal issues, estate planning tools, probate, property ownership, and gift giving strategies.
- [Estate Planning](#), from the American Bar Association (ABA), has common questions about the estate planning process, probate and administration of estates, transfer taxes and tax planning for your assets, and disability planning.
- [ABA Family Legal Guide](#), [Chapter 16: Estate Planning](#), (PDF requires Adobe Acrobat Reader). Part of the *American Bar Association Family Legal Guide* online, this 33-page chapter covers these topics: Introduction, Working With a Lawyer, Wills, Trusts, Living Trusts, Other Estate Planning Assets and Tools, Changing Your Mind, Special Considerations, Death and Taxes, Probate, & Where to Get More Information.
- [ABA Guide to Wills and Estates](#) - a comprehensive overview, available free online or for purchase. It covers: Getting Started, Transferring Property without a Will, Making a Will, Trusts, Living Trusts, Common Estate Planning Situations, Special Considerations, Death and Taxes, Changing Your Mind: *Changing, Adding to, or Revoking Your Will or Trust*, Choosing the Executor or Trustee, Planning Now to Make Things Easier for Your Family, & When You Can't Make the Decision: *Living Wills, Powers of Attorney, and Other Disability Issues*.
- FreeAdvice.com's [Estate Planning](#) discusses estate planning generally: what is estate planning; what is an estate; a description/discussion of typical estate planning documents; probate, and other related topics.

- Nolo.com's [Wills & Estate Planning](#) has general information on estate planning - wills, powers of attorney, advance medical directives, trust, estate & gift taxes. Also see Nolo's [The Right Estate Plan for You](#) - Is your estate plan in good shape? Here's what to consider whether you are young or old, single or married, have young children or not.
- MetLife's [Planning Your Estate](#) (Part of MetLife's Life Advice Library (<http://www.metlife.com/Lifeadvice/index2.html>)). Site offers **Life Advice® eAlert**, a free weekly e-mail "filled with factoids to help you better manage some of the things that matter most—your health, family, property and finances."
- Quicken's [Estate Planning](#).
- CNN Money's [Estate Planning](#) lesson.
- Prudential's [Basic Estate Planning](#)
- SmartMoney.com's [Estate Planning Information Center](#)
- SaveWealth.com's [Guide to Estate Planning](#)
- LifeNET's [Estate Planning](#)
- [Ric Edelman's Estate & Financial Planning](#)
- [ThirdAge Estate Planning](#)
- Kiplinger's [Planning in the Face of Uncertainty](#)
- MSN MoneyCentral's [Retirement & Estate Planning](#)
- [National Network of Estate Planning Attorneys, Estate Planning & You](#)
- [National Association of Financial and Estate Planning Estate Planning Basics; Planning Under Tax Act of 2001](#)
- [American Academy of Estate Planning Attorneys' Estate Planning Information Center](#)
- [Estate Planning Links.com](#)
- [Estate Planning Links by State](#) (scroll down for links)
- [Law & Estate Planning Sites](#)
- Some mutual fund companies offer information on financial, retirement, and estate planning. For example:  
 American Century's [Estate Planning](#) site to learn about other estate-planning documents and the importance of creating an estate plan.  
 Fidelity's [Estate Planning Action Center](#). Includes an [Estate Planner](#), online questionnaire to help identify potential estate planning strategies based on site user's personal situation.  
 T. Rowe Price [Estate Planning Guide](#) (PDF requires Adobe Acrobat Reader)
- [National Handbook On Laws And Programs Affecting Senior Citizens](#) (1998) describes Federal laws and programs, including Social Security, Medicaid and Medicare; and gives an overview of such topics as housing options, wills and probate, health care, long term care, nursing homes, continuing care retirement communities, advance directives, powers of attorney, guardianship, funeral services, protection of legal rights, and includes references. View online as [text](#).
- [Northwestern Mutual Life Insurance Company Estate Planning](#)
- [Estate Techniques Chart](#) [PDF requires [Adobe Acrobat Reader](#)] From [Knowledge Service.com](#) this 7 page chart covers 21 estate planning techniques from the basic

Will to advanced techniques providing a definition, the best application, the tax pro/cons, other advantages and other concerns.

- McGuireWoods' [Introduction to Estate Planning](#), [The Challenge Of Estate Planning In 2002 And Beyond: Featuring A Description And Analysis Of The 2001 Tax Legislation](#) [PDF requires Adobe Acrobat Reader] Related [estate articles](#): including [An Introduction To Estate Planning](#), [Ten Estate Planning Techniques To Consider](#).

## WILLS

- [Crash Course in Wills and Trusts](#) - estate planning information covering estate tax, probate, the executor, the power of attorney holder, and more.
- American Bar Association's [Guide to Wills & Estates](#), (PDF, requires [Adobe Acrobat Reader](#)); [Chapter 3: Making a Will](#)
- [AARP End Of Life Issues](#) - Wills & Trusts
- [Wills on the Web \(Actual Wills of Celebrities & Others\) \(Onassis, Nixon, Lennon, Presley, Disney\) \(Last Will and Testament\)](#)
- The [American Academy of Estate Planning Attorneys](#)' Consumers' section has estate planning techniques, frequently asked questions, and an estate planning quiz.
- [American College of Trust and Estate Counsel](#) has [Wills: Why You Should Have One and the Lawyer's Role in Its Preparation](#). Also, [Internet links on Estate Planning, Estate Administration & related topics](#).
- From [FedWeek](#), [An Executor's Checklist](#).

## TRUSTS & LIVING TRUSTS

- AARP [Living Trusts Alert](#) - Ineffective and expensive "living trust" products are frequently peddled to older Americans of modest means who don't need them. AARP sounds a warning against fast-talking crooks, some who fraudulently use AARP's name to sell their wares.
- AARP – [Wills & Living Trusts – What You Should Know](#)
- MSNBC's [Living Trusts – How to Avoid a Deceptive Deal](#)
- [Federal Trade Commission](#) [Livings Trust Offers How to Make Sure They're Trust-worthy](#)
- American Bar Association's [Guide to Wills & Estates](#), (PDF, requires [Adobe Acrobat Reader](#)); [Chapter 4: Trusts](#); [Chapter 5: Living Trusts](#)
- Disclaimer Trust:
  - ["The 'Disclaimer' Trust: An Ideal Estate Plan for the Medium Size Estate,"](#) *Probate and Property*, Vol. 1, No. 5, p. 48 (September/October 1987) @ <http://evans-legal.com/dan/disclaimtr.html>. originally published by the [Real Property, Probate and Trust Law Section](#) of the [American Bar Association](#) in *Probate and Property*, Vol. 1, No. 5, p. 48 (September/October 1987). Changes have been made in the sample will provisions following the article, to reflect the author's current practices, but no additional research has been done to update or confirm any the legal authorities or legal principles. D.B.E. 12/11/96]

## ELDER LAW & CARE

- National Aging Information Center (NAIC) [Elder Law Internet Information](#) Legal Services for Older Adults & Elder Law
- [National Academy of Elder Law Attorneys](#) (NAELA) [Public](#) list of elder law resources.
- [ElderWeb.com](#) is an *eldercare sourcebook on the Web*. It is a research site for professionals and family members, with thousands of on-site and off-site articles about eldercare and long term care, including legal, financial, medical, housing, policy, research, and statistics. A Web gateway, with links for caregivers, providers, and advisors to the elderly to on-line information about health, financial, legal, housing, aging, and other eldercare issues.
- [Centers for Medicare & Medicaid Services](#) (CMS) Medicare, Medicaid, and the State Children's Health Insurance Program (CHIP)
- [Medicare.gov](#) - Official Medicare Info
- [ABA Facts About the Law & the Elderly](#) (1998) has information about law and the elderly, including elder abuse, guardianship, rights of grandparents, and medical and end-of-life planning. For example: [Table 3 Alternatives to Guardianship](#); [Table 4 Health Care Surrogate Decision-Making Legislation](#).
- ABA's [Mental & Physical Disability Law](#)
- [AARP Research - Public Policy Institute](#); AARP's [Assisted Living in the United States](#); [The Costs of Long-Term Care: Public Perceptions Versus Reality](#), AARP's [Caregiving - Checking Legal Issues](#) - Financial & Health Care Documents discussed.
- [CareView](#) - Search for a nursing home or assisted living. Site offers a web-based preview of many facilities. Narrated video "tours" and detailed descriptions enable those involved to make informed decisions regarding a facility, based on their individual needs.
- Elder Care Resources - [CareScout.com](#) - Nursing Homes and Assisted Living Facilities
- [AgingStats.Gov](#) - Web Site of the Federal Interagency Forum on Aging-Related Statistics
- From USAA Educational Foundation, "[Good information for good decisions](#)", Eldercare
- The Financial Planning Association's [Let's Get Specific – Elder and Long-term Health Care Planning](#),
- [Association for Protection of the Elderly](#) (APE) (<http://www.apeape.org/index.html>), offers [Easy Steps to Obtain Quality Care For Your Loved One In A Nursing Home](#) – R.N. Sandra Ketterman details steps to take to assure quality care.
- [National Handbook On Laws And Programs Affecting Senior Citizens](#) (1998) describes Federal laws and programs, including Social Security, Medicaid and Medicare; and gives an overview of such topics as housing options, wills and probate, health care, long term care, nursing homes, continuing care retirement communities, advance directives, powers of attorney, guardianship, funeral services, protection of legal rights, and includes references. View online in [text](#). Similar for Virginia: [Virginia State Bar Senior Citizens Handbook](#).

- [FirstGov for Seniors](#)
- [PlanetGov.com - Senior References Online - Elder Care - Retirement](#)
- [Elder Law Answers, Medicaid planning, Medicare, nursing home rights](#)

## ESTATE & GIFT TAX

- ABA's [Guide to Wills & Estates](#), (PDF, requires [Adobe Acrobat Reader](#)); [Chapter 8: Death and Taxes](#)
- [Estate + Gift Tax](#) (Cornell Legal Information Institute)
- IRS Publication 950, [Introduction to Estate and Gift Taxes](#) [PDF]
- Smartmoney.com's com's [Estate Planning Index](#), has an informative article comparing the gift tax to the estate tax. Guide includes these topics: You've Gotta Start Somewhere; Charitable Trusts; Check Your Life Insurance; Passing Your Home to Heirs; Start Giving It Away Early; Estate Planning With a Roth IRA; Why Gift Tax Beats Estate Tax; & Estate Tax Traps for Noncitizens. Also [Will You Owe Estate Taxes Calculator](#)

## MISCELLANEOUS

- Department of the Army Pamphlet 600-5, [Handbook for Retiring Soldiers & Families](#).
- [Building Wealth: A Beginner's Guide to Securing Your Financial Future](#). From the Dallas Federal Reserve Bank, this 31-page workbook is an informative and thoughtful introduction to developing a plan to build personal wealth. Through a combination of budgeting, saving, and investing, users will learn how to save money. The workbook begins with a discussion on setting financial goals; then explains strategies for keeping track of money, ensuring saving, investing, and controlling debt.
- From the Alliance for Investor Education, the Securities Industry Association, [How You Can Profit from the Tax Law Changes](#) (PDF). Also see, [Resolve to Save and Invest in '02!](#) "a collection of 10 excellent resources for people who want to make 2002 the year that they start saving and investing for the future."
- [Building Financial Freedom](#).
- From [FedWeek](#), [10 Financial Planning Errors](#).
- [GovBenefits](#), featuring 55 federal benefit programs under Online Services for Citizens on FirstGov's homepage <http://www.firstgov.gov>.

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## GLOSSARY

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Here are common estate planning terms. You may also find an online legal dictionary or encyclopedia such as Nolo's: <http://www.nolo.com/lawcenter/index.cfm>, useful in understanding these or other terms.

**Administrator:** A person appointed by the court to manage the assets and liabilities of a decedent when there is no will, when the will does not name an executor, or when the named executor does not serve or declines to serve.

**Advance Medical Directive:** A legal document explaining one's wishes about medical treatment if you become incompetent or unable to communicate. Also known as an advance directive, medical directive, physician's directive, or living will. Often associated with a medical or health care power of attorney.

**Annuity:** An obligation to pay a stated sum, usually monthly or annually, to a stated recipient. These payments terminate upon the death of the designated beneficiary.

**Beneficiary:** A person designated to receive income, principal, or other assets. The benefit may come from a variety of sources, such as an insurance policy, another contract, a trust, or a will.

**Bequest:** Property, usually personal property, disposed of in a will.

**Bypass Trust:** See credit shelter trust.

**Codicil:** A written supplement or addition to a will, not necessarily disposing of the entire estate, which modifies, explains, or otherwise qualifies an existing will.

**Community Property:** Property acquired during marriage in which both the husband and the wife have an undivided one-half interest. Usually this does not include property acquired by an inheritance or gift to a spouse during the marriage. Not more than half of the property can be disposed of by your will or trust. This type of property ownership exists in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin, and Alaska (if elected).

**Conservator:** A person or institution appointed by a court to manage the assets and/or personal affairs of a minor or disabled person. A managing conservator is appointed by a court to manage the estate or affairs of someone who is legally incapable of doing so. Also known as a guardian.

**Credit Shelter Trust:** A trust that uses the unified credit of the first spouse to die. The surviving spouse may receive income and principal, if needed. The trust is set up so that the surviving heirs get a life estate in the trust rather than the property itself in order to avoid estate taxes on an estate larger than the tax credit sheltered amount. Also known as a bypass trust.

**Death Tax:** An estate or inheritance tax.

**Decedent:** A dead person; one who died recently.

**Disclaimer:** Allows a beneficiary to irrevocably refuse a gift or bequest without making a taxable gift to the eventual recipient. The disclaimer must be in writing and delivered to a transferor within nine months of the creation of the disclaimed interest. The beneficiary who is disclaiming the gift or bequest cannot accept benefits or direct to whom the property will pass. A disclaimer of a partial interest in property is possible. Disclaimers are often used for post-death estate tax saving and planning.

**Donor:** One who makes a gift.

**Durable Power of Attorney:** A power of attorney that remains in effect during the grantor's incompetency.

**Estate:** The total of all real and personal property that you own when you die and that passes to your beneficiaries or heirs subject to the payment of your debts and claims.

**Estate Tax:** A tax imposed on property transferred by will or by intestate succession.

**Executor:** A person named by a testator to carry out the provisions in the testator's will. Some states allow testators to appoint an independent executor, who can administer the estate with very little court supervision. Additionally, an organization such as a bank or trust company can serve as an executor if selected by the testator.

**Fiduciary:** One who has a legal duty to act primarily for another's benefit and who must exercise a high standard of care in managing another's money or property.

**Generation Skipping Tax:** A tax on property transfers that skip a generation of family members. For example, if you leave money directly to your grandchild instead of your child, it may create a generation skipping tax.

**Generation Skipping Trust:** A trust having a beneficiary who is two or more generations younger than the grantor (called a "skip" person).

**Gift:** The act of voluntarily transferring property to another without compensation. A gift made during the donor's lifetime and delivered with the intention of irrevocably surrendering control over the property is an inter vivos gift. A gift made in a will is a testamentary gift.

**Gift Tax:** A tax imposed when property is voluntarily and gratuitously transferred during the giver or donor's life. Under federal law the donor is liable for the tax. Some states tax the recipient of the gift.

**Grantor:** One who conveys property to another; also a person who establishes a trust. Also known as a settlor, donor, creator, or trustor.

**Gross Estate:** The total value of your property at death without any deductions for debts or liabilities.

**Guardian:** One who has the legal authority and duty to care for another person or that person's property, especially because of the other's infancy, incapacity, or disability. A testamentary guardian is appointed by a parent's will for the person and property of a child until the child reaches the age of majority.



**Health Care Directive:** See advance medical directive.

**Health Care Power of Attorney:** A special power of attorney appointing someone to make health care decisions for you (“proxy”). Often used with an advance medical directive, but may cover non-terminal condition medical treatment too. Also see medical power of attorney.

**Health Care Proxy:** A person you designate to make health care decisions for you.

**Heir:** A person who inherits from a decedent under state law.

**Incapacity:** Legally unable to manage one’s own affairs due to mental or physical disability. Legal consequences do not attach to the actions of an incapacitated person. For example, a five year old has an incapacity to make a legally binding contract.

**Incompetency:** Lack of legal ability in some respect.

**Inheritance Tax:** A tax imposed by some states on a person who inherits property from another.

**Intangible Property:** Property that lacks a physical existence. Examples include bank accounts and stock options.

**Inter Vivos Trust:** A trust that is created and takes effect during the settlor’s lifetime. The inter vivos trust contains instructions for management and distribution of the trust property. A trustee holds legal title to the property for another person, called the beneficiary. Also known as a living trust.

**Intestate:** Dying without a will or without providing legally binding instructions for the distribution of your property after death.

**Intestate Law:** The applicable state statute governing the distribution of your estates/property if you die without a valid will.

**Irrevocable:** Unalterable; cannot be changed or modified.

**Irrevocable Trust:** A trust that cannot be terminated or changed by the settlor once it is created. In many states a trust will be deemed irrevocable unless the settlor specifies otherwise.

**Joint Tenancy:** A tenancy with two or more co-owners who take identical interests simultaneously by the same instrument and with the same right of possession.

**Joint Tenancy with Right of Survivorship:** A joint tenancy where a joint tenant has the right to succeed to the whole estate upon the death of the other joint tenant. Many husbands and wives own their homes jointly with right of survivorship. This means that the surviving spouse automatically inherits the dead spouse’s ownership in the property when the spouse dies. Property owned this way passes outside a will.

**Life Estate:** An estate held only for the duration of a person’s life, usually the possessor’s. For example, if a testator gave certain property “to Jane Smith for life”, Jane would be entitled to

use the property until her death. Then the property would pass to the beneficiary previously named by the testator.

**Life Insurance Trust:** A trust consisting of one or more life insurance policies payable to the trust when the insured dies.

**Living Trust:** See inter vivos trust.

**Living Will:** An instrument, signed with the formalities necessary under state or federal law, in which you state your intention to refuse medical treatment if you become both terminally ill and unable to communicate such a refusal. Also known as an advance directive or advance medical directive.

**Marital Deduction:** A federal tax deduction allowed for lifetime and testamentary transfers from one spouse to another spouse. This does not apply except under very limited circumstances if your spouse is not a citizen of the United States.

**Medical Power of Attorney:** A legal document in which you appoint someone you trusts to decide about your medical care if you cannot make those decisions. Also known as a health care proxy or appointment of a health care agent. The person you appoint to make the decisions may be called a health care agent, surrogate, attorney-in-fact, or proxy.

**Military Testamentary Instrument:** A special form of federal self-proving clause for a will for persons eligible for military legal assistance. It is prepared in accordance with DoD Directive 1350.4, Legal Assistance Matters, and federal law. It disposes of the property of the testator. It has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. However, it is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State.

**Minor Child:** A child who is under legal age under state law (usually from 18 to 21 years of age). Unless other plans have been established in a will or trust, any property left to a minor child becomes the child's own property to use, spend, or give away once the child reaches the age of majority.

**Net Estate:** The portion of an estate left after the payment of state and federal estate taxes.

**Pension Plan:** An employer's plan established to pay long-term retirement benefits to employees or their beneficiaries; a plan providing systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement.

**Per Capita:** A means by which a testator can distribute the estate so that each of the surviving descendants will share equally. For example, John Doe has three children and two grandchildren who are the children of his deceased son. John stated in his will that his children and grandchildren should share equally in the estate. This means the estate would be divided into five parts, and John's surviving children would share equally with John's two grandchildren. (Compare with per stirpes.)

**Personal Property:** Any movable or intangible thing that is subject to ownership and not classified as real property. Examples are furniture, cars, and jewelry.

**Personal Representative:** A person who settles a decedent's estate. Also known as an executor or administrator.

**Per Stirpes:** A method of dividing an estate among one's surviving descendants. Each survivor receives only the amount that his/her immediate ancestor would have received if that ancestor had been alive at the time of the testator's death. For example, John Doe has three children and two grandchildren who are the children of his deceased son. John stated in his will that his descendants will inherit "per stirpes". John's estate at his death will be divided into four parts. Each of his surviving children will get one-fourth of the estate. The two grandchildren will share the remaining one-fourth—the part that would have been inherited by their father if he had survived John. (Compare with per capita.)

**Pour-over Will:** A will that transfers assets from the decedent's estate to a previously established trust.

**Power of Attorney:** An instrument where you (known as the grantor or principal) give someone legal authority to act as an agent or attorney-in-fact for you. A general power of attorney is very broad and authorizes your agent to conduct a wide range of activities on your behalf. A special or limited power of attorney limits the agent's authority to act to a specified matter for you, for example, to sell real estate, to purchase a car.

**Probate:** The judicial procedure by which a will is proved valid. The court determines if the will is valid, hears all claims, and orders creditors paid and property distributed according to the terms of the will if it is valid.

**Property:** The right of ownership; any external thing over which the rights of possession, use, and enjoyment are exercised.

**Real Property:** Land and anything growing on, attached to, or erected on it.

**Revocable:** Capable of being changed, canceled or withdrawn.

**Revocable Trust:** A trust in which you (known as the creator or settlor) may change or terminate the trust and recover the trust property and any undistributed income.

**Roth IRA:** An IRA in which contributions are nondeductible when they are made. No further taxes are assessed on the contributions or accrued interest when the money is withdrawn if all the specified rules are followed.

**Separate Property:** In a community property state, property that a spouse owned before marriage or acquired during marriage by inheritance or by gift from a third party. Separate property also can include property acquired during the marriage but after the spouses have entered into a separation agreement and have begun living apart.

**Settlor:** Maker or creator of a trust.

**Special Bequest:** In a will or trust, a specifically identified item of property, such as a ring, sum of money, or antique, that is to go to a particular person or charity before any other distribution of property is made.

**Special Needs Trust:** A trust for a disabled spouse, child, or other person which provides funds to enhance and enrich the life of the beneficiary and provide to the beneficiary goods and services that might not otherwise be available through assistance from governmental programs. Sometimes trusts of this type are called supplemental needs trust.

**Tenancy:** The possession or occupancy of land by right or title.

**Tenancy by the Entirety:** A joint tenancy with right of survivorship between husband and wife. This type of tenancy exists in only a few states.

**Tenancy in Common:** A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but not right of survivorship. Also known as common tenancy or estate in common.

**Testamentary Trust:** A trust that is created in your will and takes effect when you die.

**Testate:** Died with a will.

**Testator:** A person who has made a will; a person who dies leaving a will.

**Titled Property:** Property for which the owner has legal evidence reflecting ownership in the property. An example is a car for which the owner possesses a written title.

**Transfer on Death Account:** An account with a legal agreement that lets the owner pass ownership of certain assets in the account to beneficiaries the owner chose to receive the property upon the owner's death. The assets do not go through probate but do go directly to the named beneficiaries.

**Transfer Tax:** A tax imposed on the transfer of property, especially by will, inheritance, or gift. The federal estate and gift tax is sometimes referred to as the unified transfer tax or the unified estate and gift tax because lifetime gifts and death gifts are treated equally under the same tax laws. In 2001 you can transfer during life or at death up to \$1,000,000 in assets free of federal gift or estate taxes. An estate tax credit gradually increases until the year 2010, when the estate tax is completely repealed.

**Trust:** A set of instructions that specifies how you want your assets managed and distributed to your beneficiaries. The trust is created by a legal document that names an individual or institution to manage the assets placed in the trust. A trust creates a fiduciary relationship regarding the property in it. The property interest held by one person (the trustee) is at the request of another person (the settlor) for the benefit of a third party (the beneficiary).

**Trustee:** A person or institution responsible for the management and distribution of property held in a trust. The trustee owes a fiduciary duty to the trust beneficiary and has the authority to act according to the instructions provided in the trust agreement.

**Unified Credit:** A tax credit applied against the federal unified transfer tax. See transfer tax.

**Uniform Gift to Minors Act:** See Uniform Transfers to Minors Act.

**Uniform Transfers to Minors Act:** A uniform law, adopted by most states, providing for the transfer of property to a minor, permitting a custodian acting in a fiduciary capacity to manage

the investments and apply the income from the property for the minor's support. For text of uniform laws, see National Conference of Commissioners on Uniform State Laws:  
<http://www.nccusl.org/nccusl/default.asp>.

**Will:** A legally binding document that distributes your assets not otherwise disposed of at death. It is not effective until death and can be revoked up to the time of death or until there is a loss of mental capacity to make a valid will.

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